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MONTANA LEGISLATIVE HISTORY

Chapter 3 Sp. Session L June 1999
Bill House ____ Senate 1

History and final status sheet X
Introduced bill X
Fiscal note NA
Third reading bill NA
Final version of bill X

House Committee on Natural Resources
Hearing date(s)* 6-16
Executive action (vote) date(s)* 6-16
Comm. Report NA
Floor 2nd reading & vote 6-16
Floor 3rd reading & vote 6-16

Senate Committee on Natural Resources
Hearing date(s)* 6-15
Executive action (vote) date(s)* 6-15
Comm. Report NA
Floor 2nd reading & vote 6-15
Floor 3rd reading & vote 6-15

Conference or Free Conference Comm. ____ Yes X No
Hearing date(s)* ____
Executive action (vote) date(s)* ____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? ____ Yes X No
Committee ____ Report ____

NOTES: Ratify Water Rights Compact Between the Crow Tribe and the State of Montana

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Compiled by: rg
Date: 3-2-2016

LEGISLATION BY PRIMARY SPONSOR

COLE, MACK
SB 1

LYNCH, J.D.
SB 2

STOVALL, JAY
HB 1

ZOOK, TOM
HB 2

GRAND TOTALS

INTRODUCED
House 2
Senate 2
Total 4

PASSED BY LEGISLATURE
House 2
Senate 2
Total 4

ADOPTED; SIGNED INTO LAW; FILED AS SESSION LAW*
House 2
Senate 2
Total 4

SENATE BILLS

SB 1 Introduced by Cole, et al. *LC0001 Drafter: Petesch*

Ratify Water Rights Compact Between the Crow Tribe and the State of Montana

6/09	Introduced		
6/15	1st Reading		
6/15	Referred to Natural Resources		
6/15	Hearing		
6/15	Committee Executive Action--Bill Passed	10	0
6/15	Committee Report--Bill Passed		
6/15	2nd Reading Passed	44	5
6/15	3rd Reading Passed	45	5
	Transmitted to House		
6/16	1st Reading		
6/16	Referred to Natural Resources		
6/16	Hearing		
6/16	Committee Executive Action--Bill Concurred as Amended	14	6
6/16	Committee Report--Bill Concurred as Amended		
6/16	2nd Reading Concurred	81	17
6/16	3rd Reading Concurred	81	17

	Returned to Senate with Amendments		
6/16	2nd Reading House Amendments Concurred	38	5
6/16	3rd Reading Passed as Amended by House	40	5
6/16	Sent to Enrolling		
6/16	Returned from Enrolling		
6/17	Signed by President		
6/17	Signed by Speaker		
6/17	Transmitted to Governor		
6/22	Signed by Governor		
6/22	Chapter Number Assigned		
	Chapter Number 3		
	Effective Date: 6/22/1999 - All Sections		

SB 2 Introduced by Lynch, et al. *LC0004 Drafter: Lane*

Exempt Certain Speeding Violations from Surcharges

6/15	Introduced		
6/15	1st Reading		
6/15	Referred to Highways and Transportation		
6/15	Hearing		
6/15	Committee Executive Action--Bill Passed as Amended		
6/15	Committee Report--Bill Passed as Amended		
6/15	2nd Reading Passed as Amended	27	5
6/15	3rd Reading Passed	45	5
	Transmitted to House		
6/16	1st Reading		
6/16	Referred to Transportation		
6/16	Hearing		
6/16	Committee Executive Action--Bill Concurred	17	1
6/16	Committee Report--Bill Concurred		
6/16	2nd Reading Concurred	87	11
6/16	3rd Reading Concurred	87	11
	Returned to Senate		
6/16	Sent to Enrolling		
6/16	Returned from Enrolling		
6/17	Signed by President		
6/17	Signed by Speaker		
6/17	Transmitted to Governor		
6/22	Signed by Governor		
6/22	Chapter Number Assigned		
	Chapter Number 4		
	Effective Date: 6/22/1999 - All Sections		

HOUSE BILLS

HB 1 Introduced by Stovall *LC0002 Drafter: Petesch*

Implement Crow Water Compact and Appropriate Coal Tax Settlement Funds

6/08	Introduced
6/15	1st Reading
6/15	Referred to Natural Resources
6/15	Hearing

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JUN 15 1999
OF MONTANA

SENATE BILL NO. 1

INTRODUCED BY M. COLE, J. STOVALL

A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE CROW TRIBE AND THE STATE OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Crow Tribe-Montana compact ratified.** The compact entered into by the State of Montana and the Crow Tribe and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on June__, 1999, is ratified. The compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY

THE STATE OF MONTANA,

THE CROW TRIBE,

AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Crow Tribe, and the United States of America for the purpose of settling any and all existing water rights claims of or on behalf of the Crow Tribe of Indians in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1975, the United States, on behalf of the Crow Tribe, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights, see, U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. §666(a)(1)(1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Crow tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Crow Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the lands and waters constituting the Crow Indian Reservation and Tribal Interests in the Ceded Strip were part of the area recognized as the territory of the Crow Indians under the Treaty of Fort Laramie of September 17, 1851 and also were part of the area set apart for the Crow Tribe under the Treaty of Fort Laramie of May 7, 1868; and

WHEREAS, for the purposes of this Compact, the priority date for the Tribal Water recognized is May 7, 1868, which is the senior water right on the water sources covered by this Compact;

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, Northern Cheyenne Tribe v. Adsit, 721 F.2d 1187, 1189 (9th Cir. 1983); and

WHEREAS, the adjudication of Crow tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Crow Tribe within the State of Montana; and

WHEREAS, the Crow Tribal Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 99-33; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986, Supp. 1992), inter alia; and

WHEREAS, the Crow Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of all the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all Parties that the water rights claims of the Crow Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States; and

WHEREAS, in settling the water rights claims of the Crow Tribe the Parties do not intend to alter

or amend or to adopt or preclude any interpretation of the Yellowstone River Compact (Act of October 10, 1951, ch. 629, 65 Stat.663 (1951));

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Crow Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

2. "Acre Feet Per Year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

3. "Adverse Affect" or "Adversely Affect" means interference with or to interfere with the reasonable exercise of a water right.

4. "Bighorn River Basin" means Water Court Basin 43P, the mainstem of the Bighorn River and its tributaries (exclusive of the Little Bighorn River and its tributaries) within Montana to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

5. "Bighorn Lake" means the body of water impounded on the Bighorn River by Yellowtail Dam, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana.

6. "Board" means the Crow - Montana Compact Board established by Section F, of Article IV of this Compact.

7. "Ceded Strip" means the area covered by Article III of the Act of April 27, 1904 (33 Stat.352), as depicted on the map attached as Appendix 5.

8. "Change in Use" as applied to the Tribal Water Right, means a change in the point of diversion, the place of use, the purpose of use, or the place or the means of storage.

9. "Clarks Fork Yellowstone River Basin" means Water Court Basin 43D, the mainstem of the Clarks Fork Yellowstone River and its tributaries from the Montana-Wyoming border to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

10. "Crow Irrigation Project" means the irrigation project authorized by the Act of March 3, 1891 (26 Stat. 989, 1040) managed by the United States, Department of the Interior, Bureau of Indian Affairs, as of the date this Compact has been ratified by the Montana legislature, consisting of the following project units: Agency, Big Horn, Forty Mile, Lodge Grass #1, Lodge Grass #2, Pryor, Reno, Soap Creek,

and Upper Little Horn; and including land held in trust by the United States for the Tribe or a Tribal member within the Bozeman Trail and Two Leggins districts which are managed by private irrigation associations as of the date this Compact has been ratified by the Montana legislature.

11. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

12. "Effective Date" means the date on which the Compact is ratified by the Crow Tribal Council, by the Montana legislature, and by the Congress of the United States, whichever date is latest.

13. "Groundwater" means any water that is beneath the ground surface.

14. "Little Bighorn River Basin" means Water Court Basin 43O, the mainstem of the Little Bighorn River and its tributaries from the Montana-Wyoming border to its confluence with the Bighorn River, as depicted on the map attached as Appendix 2.

15. "Natural Flow" means water that would exist in the Bighorn River and its tributaries in the absence of human intervention.

16. "Parties" means the Tribe, the State, and the United States.

17. "Person" means an individual or any other entity, public or private, including the State, the Tribe, and the United States and all officers, agents, and departments of each of the above.

18. "Pryor Creek Basin" means Water Court Basin 43E, the mainstem of Pryor Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

19. "Recognized Under State Law" when referring to a water right, means a water right arising under Montana law or a water right held by a nonmember of the Tribe on land not held in trust by the United States for the Tribe or a Tribal member.

20. "Release" means to discharge water from storage, or the discharge of water from storage.

21. "Reservation" means the Crow Indian Reservation consisting of the area as presently set apart for the Crow Tribe pursuant to the following Treaty and laws: Article 2 of the Fort Laramie Treaty of May 7, 1868 (15 Stat. 649); the Act of April 11, 1882 (22 Stat. 42); the Act of March 3, 1891 (26 Stat. 989); the Act of April 27, 1904 (33 Stat.352); the Act of August 31, 1937 (50 Stat. 884); and, the Act of November 2, 1994 (108 Stat. 4636), as depicted on the map attached as Appendix 4.

22. "Rosebud Creek Basin" means Water Court Basin 42A, the mainstem of Rosebud Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map

attached as Appendix 2.

23. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

24. "Shoshone River Basin" means Water Court Basin 43N, the mainstem of the Shoshone River and its tributaries within Montana, as depicted on the map attached as Appendix 2.

25. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof.

26. "Tongue River Basin" means Water Court Basin 42B, the mainstem of the Tongue River and its tributaries from the Montana-Wyoming border to above and including Hanging Woman Creek, as depicted on the map attached as Appendix 2.

27. "Transfer" as applied to the Tribal Water Right, means to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.

28. "Tribal Water Resources Department" or "TWRD" means the Crow Tribal Water Resources Department, or any successor agency.

29. "Tribal Interests in the Ceded Strip" means all present and acquired interests in real property, including mineral interests, held in trust by the United States for the Tribe or Tribal members within the Ceded Strip, consisting of: Crow Indian allotments held in trust by the United States for the Tribe or Tribal members; interests restored to the Tribe pursuant to the Act of May 19, 1958 (72 Stat. 121), as modified by the Act of August 14, 1958 (72 Stat. 575); and other interests held in trust by the United States for the Tribe or Tribal members.

30. "Tribal Water Right" means the right of the Crow Tribe, including any Tribal member, to divert, use, or store water as described in Article III of this Compact.

31. "Tribe" means the Crow Tribe and all officers, agents, and departments thereof.

32. "United States" means the federal government and all officers, agencies, and departments thereof.

33. "Yellowstone River Basin between Bighorn River and Tongue River" means Water Court Basin 42KJ, the mainstem of the Yellowstone River and its tributaries between Bighorn River and Tongue River, as depicted on the map attached as Appendix 2.

34. "Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River" means

Water Court Basin 43Q, the mainstem of the Yellowstone River and its tributaries between Clarks Fork Yellowstone River and Bighorn River, as depicted on the map attached as Appendix 2.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 43P: Bighorn River.

1. Quantification - Source - Volume.

a. Natural Flow. The Tribe has a quantified water right to the Natural Flow of the Bighorn River for current uses developed as of the date this Compact has been ratified by the Montana legislature and new development within the Reservation of 500,000 AFY. The use of this right is subject to Sections A.6. and A.8.a., of Article III, and the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III.

(1). The Tribe has a right to divert or use or to authorize the diversion or use of water from the Natural Flow of the Bighorn River within the Reservation, subject to the terms and conditions in Section C., of Article IV.

(2). The Tribe may change the source of water from the Natural Flow of the Bighorn River to surface flow or storage of any tributary within the Bighorn River Basin within the Reservation or to Groundwater within the Bighorn River Basin within the Reservation, subject to the terms and conditions in Section C.2.a., of Article IV.

(3). The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water from the Bighorn River as part of that project is a use of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III, in the Bighorn River Basin, and the use of this water shall be subject to federal law.

b. Storage in Bighorn Lake.

(1). Subject to the approval of, and any terms and conditions specified by, Congress and to the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III, the Tribe shall be entitled to an allocation of 300,000 AFY of water stored in Bighorn Lake. The Tribe and the State agree to seek as a part of that allocation the following:

(a). not more than 150,000 AFY of the allocation provided in Section A.1.b.(1)., of Article III may be used or diverted as authorized by the Tribe, subject to the terms and conditions in Section C., of Article IV; provided that, not more than 50,000 AFY may be used outside the Reservation subject to the terms and conditions in Section C.2.c., of Article IV. This storage allocation is in addition to the Natural

Flow Tribal Water Right provided in Section A.1.a., of Article III.

(b). not less than 150,000 AFY of the allocation provided in Section A.1.b.(1) of Article III shall only be:

(i) managed so as to be available as a Release during low flow periods pursuant to streamflow and lake level management plan agreed to under Section A.7., of Article III; or

(ii) used for beneficial purposes including diversions for consumptive uses in years of excess Natural Flows and excess storage, if any, when unappropriated or unallocated water is available, and subject to the terms and conditions in Section C., of Article IV.

(2). All other water stored in Bighorn Lake, except for the 6,000 AFY currently allocated by contract to the Montana Power Company, or its successor-in-interest, and the 30,000 AFY allocated by Congress to the Northern Cheyenne Tribe, shall be used only for flood control, production of power, maintenance of instream flows, maintenance of lake levels and carryover storage, consistent with Section A.7., of Article III and federal law.

2. **Priority Date.**

a. Natural Flow. The priority date of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III shall be May 7, 1868.

b. Storage. The priority date of the Tribal Water Right to waters stored in Bighorn Lake set forth in Section A.1.b.(1)., of Article III shall be the priority date of the water right held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA.

3. **Period of Use.** The period of use of this water right shall be from January 1 through December 31 of each year.

4. **Points and Means of Diversion.** Subject to the terms and conditions in Article IV, and except for the 50,000 AFY that may be used outside the Reservation as provided in Section A.1.b.(1).(a)., of Article III, the Tribe may divert or permit the diversion of this water right from any place and by any means within the Reservation for use within the Reservation, provided that, any diversion structure of the Tribal Water Right upstream of the Two Leggins diversion on the Bighorn River will be constructed to bypass streamflows established or modified pursuant to Section A.7., of Article III.

5. **Purposes.** Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.

6. **Protection of Water Rights Recognized Under State Law.**

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections A.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Measures to prevent Adverse Affect may include Release of water from Bighorn Lake.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. **Streamflow and Lake Level Management Plan.** Pursuant to this Compact, the Tribe, the Secretary, and the State shall develop a streamflow and lake level management plan for the Bighorn River, from the Yellowtail Afterbay Dam to a point immediately upstream of the Two Leggins diversion, and for Bighorn Lake. The streamflow and lake level management plan shall be agreed to within one (1) year after this Compact has been ratified by the Montana legislature. If the streamflow and lake level management plan is not agreed to by the Tribe, the Secretary, or the State the provisions of Section A.4.d., of Article VII apply. The streamflow and lake level management plan is not required to be implemented until the Effective Date of this Compact. The streamflow and lake level management plan may be modified at any time with the consent of the Tribe, the Secretary, and the State.

8. **Basin Closure within the Bighorn River Basin.**

a. In the Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, the DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights

Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

B. Basin 430: Little Bighorn River.

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Little Bighorn River Basin, except as provided for in Sections B.6., and B.7.a., of Article III, and except for water apportioned to Wyoming, if any, as determined by a court of competent jurisdiction or Congress. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Little Bighorn River Basin as part of that project is a use of the Tribal Water Right set forth in Section B.1.a., of Article III, and the use of this water shall be subject to federal law. Water stored in Willow Creek Reservoir also is a use of the Tribal Water Right.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section B.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Little Bighorn River Basin within the Reservation for use within the Reservation or in connection with Tribal Interests in the Ceded Strip subject to the terms and conditions in Section F., of Article III and Section C.2.b., of Article IV.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by

the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Little Bighorn Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections B.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Little Bighorn River Basin.

a. In the Little Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of

water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

C. **Basin 43E: Pryor Creek.**

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Pryor Creek Basin within the Reservation, except as provided for in Sections C.6. and C.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Pryor Creek Basin as part of that project is a use of the Tribal Water Right set forth in Section C.1.a., of Article III, and the use of this water shall be subject to federal law.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section C.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the

Pryor Creek Basin within the Reservation for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections C.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely

Affect the exercise of water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Pryor Creek Basin.

a. In the Pryor Creek Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

D. Basin 42A: Rosebud Creek.

1. Quantification - Source - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Rosebud Creek Basin within the Reservation, except as provided for in Sections D.6. and D.7., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section D.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Rosebud Creek Basin for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Within the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Rosebud Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections D.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued within the Reservation is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the

affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. Outside the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin outside the Reservation are protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right to the same extent provided in the Northern Cheyenne - Montana Compact, Sections A.3.c.i. and ii., of Article II, 85-20-301, MCA. Protection from an assertion of senior priority in the exercise of the Crow Tribal Water Right for the Northern Cheyenne Tribal Water Right shall only be as provided in Section D.7., of Article III.

e. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, or outside the Reservation to the same extent provided in the Northern Cheyenne - Montana Compact, Section A.3.c.i. and ii., of Article II, 85-20-301, MCA.

f. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Protection of Northern Cheyenne Tribal Water Rights within the Northern Cheyenne Reservation.

a. Except as provided in Section G.2., of Article III, the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA, is protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right.

b. New development, Change in Use, or Transfer of the Crow Tribal Water Right shall not Adversely Affect the exercise of the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA.

8. Basin Closure within the Rosebud Creek Basin within the Reservation.

a. In the Rosebud Creek Basin upstream from the point that Rosebud Creek or any tributary of Rosebud Creek leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

E. **Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River.**

1. **Quantification - Source - Volume.** The Tribe has a water right for all surface flow, Groundwater, and storage within the Reservation within Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone

River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River, except as provided in Sections E.6. and E.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section E.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the drainages listed in Section E.1., of Article III within the Reservation for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections E.6.a.(1). and (2)., of Article III extends only to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in

the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in each drainage listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Reservation.

a. In the drainages listed in Section E.I., of Article III, upstream from the point that each stream or its tributaries leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a

source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

F. Tribal Water Right in the Ceded Strip.

1. Quantification - Source - Volume.

a. Tribal Interests in the Ceded Strip. As part of the Tribal Water Right, the Tribe has a right to divert a total of 47,000 AFY from surface flow, Groundwater, or storage within the Ceded Strip from portions of the Sarpy Creek drainage and Yellowstone River within Yellowstone River Basin between Bighorn River and Tongue River; Fly Creek drainage and Yellowstone River within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River; Pryor Creek Basin; and Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip; and, water imported to the Ceded Strip from the Little Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip. Diversion and use shall be subject to the terms and conditions in Sections C.1.c. and C.1.d., of Article IV.

(1). This 47,000 AFY is in addition to the Tribal Water Right set forth in Sections A.1., B.1., C.1., and E.1., of Article III, except that any diversion of this right from surface flow, Groundwater, or storage within the Bighorn River Basin shall be deducted from the Tribal Water Right as set forth in Section A.1., of Article III.

(2). No more than 47,000 AFY may be diverted and used in connection with Tribal Interests in the Ceded Strip from all water sources, provided that:

(a). no more than 2,500 AFY from all water sources including the Yellowstone River may be diverted upstream from the confluence of the Bighorn River and the Yellowstone River.

(b). no more than 7,000 AF may be diverted from all sources including the Yellowstone River in any month, provided that, aggregate uses from all sources not exceed 47,000 AFY.

b. Use limited to within the Ceded Strip. The Tribal Water Right of 47,000 AFY for use in connection with Tribal Interests in the Ceded Strip shall be used only within the Ceded Strip and shall not

be considered a Change in Use or Transfer outside the Reservation for purposes of Section C.2.c., of Article IV.

c. Any portion of the 50,000 AFY set forth in Section A.1.b.(1).(a)., of Article III which may be used outside the Reservation may also be used in connection with Tribal Interests in the Ceded Strip in addition to the Tribal Water Right of 47,000 AFY set forth in Section F.1.a., of Article III.

2. **Priority Date.** The priority date of the Tribal Water Right set forth in Section F.1.a., of Article III shall be May 7, 1868.

3. **Period of Use.** The period of use of this water right shall be from January 1 through December 31 of each year.

4. **Points and Means of Diversion.** Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means for use in connection with Tribal Interests in the Ceded Strip within the Ceded Strip.

5. **Purposes.** Subject to the terms and conditions in Article IV, the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip may be used for beneficial purposes allowed by Tribal, federal and state law.

6. **Protection of Water Rights Recognized Under State Law.**

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law affected by the exercise of the Tribal Water Right in the Ceded Strip with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections F.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation Nos.

1781-r and 10006-r); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

d. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

G. **Additional Rights to Water.** As part of the water rights specifically set forth in Sections A., B., C., D., E., and F., of Article III, the Tribe has a right to water from the following sources:

1. Appurtenant Water Rights. For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. At such time that the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall become part of and not in addition to the Tribal Water Right quantified in this Compact with a May 7, 1868 priority date, provided that, the acquired water right shall retain any protections set forth in this Compact. The Tribe shall notify DNRC of any acquisition of water in the Tribe's annual report and shall identify the water right acquired, as set forth in Section E.1., of Article IV. Any water right acquired shall be added as decreed by the Montana Water Court to the list of current uses of the Tribal Water Right as provided in Section E.2., of Article IV.

2. Exempt Rights.

a. Religious or cultural uses of the Tribal Water Right by Crow Tribal members within the

Reservation in de minimis amounts shall be allowed without prior review by DNRC.

b. In accordance with the terms and conditions in Section C.1., of Article IV, TWRD may authorize development of the Tribal Water Right for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations necessary to protect lives or property.

c. Uses of the Tribal Water Right provided for in Sections G.2.a. and G.2.b., of Article III, are not subject to protection of water rights Recognized Under State Law provided in Sections A.6., B.6., C.6., D.6., D.7., E.6., and F.6., of Article III, or streamflows established or modified pursuant to Section A.7., of Article III.

H. Proposed Decree. For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III is attached as Appendix 1. If there are differences between Appendix 1 and the Final Decree, the Final Decree shall control.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States.

2. Tribal Water Right: Administration.

a. Subject to the limitations imposed by this Compact and federal law, the use of the Tribal Water Right shall be administered by the Tribe through TWRD within the Reservation, in the Ceded Strip, and outside the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in F.4., of Article IV, concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which do not raise issues concerning the application of state or federal law shall be within

the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between holders of water rights under the Tribal Water Right. TWRD shall develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current water use and diversions and new development shall be identified by location and quantity.

b. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the Effective Date of this Compact pursuant to any requirements set forth in the Constitution of the Crow Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

c. The Tribe shall not administer any water right Recognized Under State Law.

d. Administration, operation and maintenance, and delivery of the Tribal Water Right on the Crow Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws. Portions of the Project within the Bozeman Trail and Two Leggins Districts shall be administered in accordance with applicable law.

3. Water Rights Recognized Under State Law: Administration.

a. The State shall administer and enforce all water rights Recognized Under State Law to the use of surface flows, Groundwater, and storage within or outside the Reservation. The State shall have the final and exclusive jurisdiction to resolve all disputes between holders of water rights Recognized Under State Law.

b. The State shall not administer or enforce any part of the Tribal Water Right.

c. For water rights Recognized Under State Law, if any, utilizing water delivered by the Crow Irrigation Project, administration and distribution of such water shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws.

4. Distribution of Water Between the Parties. When water availability is insufficient to satisfy all water rights under the Tribal Water Right and all water rights Recognized Under State Law within the Reservation, administration and distribution shall be as follows:

a. distribution between the water administered by the Tribe and the United States for current uses of the Tribal Water Right within the Reservation developed as of the date this Compact has been

ratified by the Montana legislature and the water for water rights Recognized Under State Law within the Reservation with a priority date before this Compact has been ratified by the Montana legislature shall be on an equitable basis in proportion to the amount of water required for Tribal water use as listed pursuant to Section E.2., of Article IV, and the amount of water required for water rights Recognized Under State Law, provided that, the Parties recognize that distribution may not be on a precise proportional basis due to the need to take into account the physical constraints of water delivery. Administration and distribution by the Tribe, the United States, and the State within their proportional shares shall be pursuant to Tribal, federal, and state law respectively, and shall be coordinated as necessary. This distribution shall not modify the right of a holder of a water right Recognized Under State Law to seek enforcement of such water right against other water rights Recognized Under State Law in priority without the agreement of the water right holder.

b. future development of the Tribal Water Right after this Compact has been ratified by the Montana legislature shall be enforced as junior in priority to the water rights subject to a proportional distribution as set forth in Section A.4.a., of Article IV.

c. nothing in Section A.4.a., of Article IV shall prevent water users from agreeing to an alternative water distribution plan on the basis of individual water rights pursuant to applicable state, Tribal, or federal law.

5. **Subsequent Federal or State Law.** Administration under Sections A.2.d., A.3.a. and A.3.c., of Article IV shall be as set forth in this Compact except as may otherwise be determined by a court of competent jurisdiction or established by Congress.

B. Use of the Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, Tribal members, or Persons authorized by the Tribe, provided that, the Tribe may not limit or deprive Indians residing on the Reservation or in the Ceded Strip of any right, pursuant to 25 U.S.C. § 381, to a just and equal portion of the Tribal Water Right set forth in Article III.

2. Effect of Non-Use of the Tribal Water Right. State law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

C. Tribal Water Right: New Development, Change in Use, or Transfer.

1. New Development of Surface Flow, Groundwater, or Storage of the Tribal Water Right.

a. New Development of Surface Flow, Groundwater, or Storage Within the Reservation. After the Effective Date of this Compact, the Tribe may develop or authorize new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. Prerequisite Administrative Procedure within the Reservation. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation will have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:

(1). Application for new development of a surface flow, Groundwater, or storage use within the Reservation shall be made to TWRD.

(2). TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall forward the application with its determination to DNRC.

(4). If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the DNRC, has a water right with a priority date before this Compact has been

ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.

c. New Development of Surface Flow, Groundwater, or Storage for Use in Connection with Tribal Interests in the Ceded Strip. After the Effective Date of this Compact, the Tribe may develop or authorize new development, from surface flow, Groundwater, or storage, of the Tribal Water Right as set forth in Section F., of Article III and subject to the terms and conditions in Section F.1., of Article III for use in connection with Tribal Interests in the Ceded Strip; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

d. Prerequisite Administrative Procedure within the Ceded Strip. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip will have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:

(1). Application for new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip shall be made to TWRD.

(2). TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall forward the application with its determination to DNRC.

(4). If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the department, has a water right with a priority date before this Compact

has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or exempt rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50

AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

e. Groundwater Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following wells are exempt from the requirement of showing no Adverse Affect:

(1). Wells developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These wells may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of wells developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

f. Storage Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following storage facilities are exempt from the requirement of showing no Adverse Affect:

(1). Facilities storing the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These storage facilities may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of storage facilities developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

2. Change in Use or Transfer of the Tribal Water Right.

a. Change in Use or Transfer of the Tribal Water Right Within the Reservation. Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of a water right set forth in Article III of this Compact within the Reservation; provided that, such Change in Use or Transfer

shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Right set forth in Sections C.1.a. and C.1.b., of Article IV.

b. Change in Use or Transfer of the Tribal Water Right Within the Ceded Strip. Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of the Tribal Water Right set forth in Section F.1.a., of Article III within the Ceded Strip; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Right within the Ceded Strip set forth in Sections C.1.c. and C.1.d., of Article IV.

c. Change in Use or Transfer of the Tribal Water Right Outside the Reservation. Except as otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or authorize a Change in Use or a Transfer of the Tribal Water Right for up to 50,000 acre-feet of water as provided in Section A.1.b.(1).(a)., of Article III, for use outside the Reservation; provided that, any Transfer shall be for a term not to exceed 100 years, and may include provisions authorizing renewal for an additional term not to exceed 100 years; and provided that, no such Transfer shall be a permanent alienation of the water Transferred. Any Change in Use or Transfer of any such water right involving a point of diversion or place of use located outside the Reservation shall be considered a use outside the Reservation, except as provided in Section F., of Article III and Section C.2.b., of Article IV; and, further provided that, any use of Tribal water rights described in this Compact outside the Reservation shall not be deemed to convert such rights to rights arising under state law, and non-use of such rights outside the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.

(1). Applicable Law. No person may initiate a use, Change in Use, or Transfer of a Tribal water right set forth in this Compact outside the Reservation without first complying with applicable state law. Approval of an application for a use, Change in Use, or Transfer outside the Reservation by the State shall be conditioned on a valid Tribal authorization for such use, Change in Use, or Transfer by the Tribe. The

applicant shall provide DNRC with proof of a valid Tribal authorization prior to initiating the use, Change in Use, or Transfer.

(2). Diversion Facilities. With respect to diversion or transportation facilities located outside the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or Persons using such water right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

D. Water Rights Recognized Under State Law: New Development, Change in Use, or Transfer.

1. **Limit on New Development.** DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature within the Reservation, and outside the Reservation in Bighorn River Basin and in Pryor Creek Basin, provided that, the Department may issue certificates of water right or permits for use on fee land for:

a. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

b. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

c. Temporary emergency appropriations as provided in 85-2-113(3), MCA.

2. Change in Use or Transfer of Water Rights Recognized Under State Law within the Reservation. The State may authorize a change in use or transfer of a water right Recognized Under State Law within the Reservation in accordance with state law, provided that, such change or transfer shall not Adversely Affect a use of the Tribal Water Right existing at the time of the application for change in use or transfer.

a. Prerequisite Administrative Procedure. The following procedure for determining whether a change in use or transfer of a water right Recognized Under State Law within the Reservation will have

an Adverse Affect on an existing water right developed or authorized prior to the date of application for change of use or transfer under the Tribal Water Right shall be followed prior to seeking relief from the Compact Board:

(1). Application for a change in use or transfer of a water right Recognized Under State Law within the Reservation shall be made to DNRC.

(2). DNRC shall review the application and make a determination of whether the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right. Upon request by DNRC, TWRD shall provide information on developed and authorized Tribal Water Rights as recorded by TWRD to DNRC.

(3). If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall deny the application. If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will not have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall forward the application with its determination to TWRD.

(4). If, based upon the evidence, TWRD agrees with DNRC's determination, TWRD shall notify DNRC. If, however, based upon the evidence, TWRD cannot agree with DNRC's determination, TWRD shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any Tribal Water Right holder who, according to the records of TWRD, has a water right developed or authorized before the application date and may be affected by the proposed change in use or transfer of a water right Recognized Under State Law within the Reservation. TWRD shall notify DNRC within ninety (90) days of TWRD's determination.

(5). TWRD and DNRC should attempt to resolve any disagreement on DNRC's determination of no Adverse Affect on a cooperative basis. If TWRD or a holder of a water right developed or authorized under the Tribal Water Right disagree with the determination of no Adverse Affect, TWRD or the Tribal Water Right holder may seek relief from the Compact Board.

E. **Reporting Requirements.**

1. On an annual basis DNRC shall provide the Tribe and the United States with a listing of all uses of surface flow, Groundwater, or storage for which a certificate of water right or permit has been issued

or a change in use or transfer has been approved by DNRC within the Reservation, in the Ceded Strip, and in drainages affected by this Compact.

2. Within one (1) year after this Compact has been ratified by the Montana legislature, the TWRD and the United States shall provide the DNRC with a report listing all current uses of the Tribal Water Right, including uses by Tribal members, existing as of the date this Compact has been ratified by the Montana legislature. DNRC may request additional information from TWRD or the United States to assist in reviewing the report. DNRC must approve or disapprove of the listing of all current uses of the Tribal Water Right within six (6) months after receipt of the report.

3. On an annual basis TWRD shall provide the DNRC and the United States with a listing of all new development of the Tribal Water Right described in this Compact within the Reservation, in the Ceded Strip, and outside the Reservation, and of all Changes in Use or Transfers of water rights within and outside the reservation since the last report.

4. TWRD, DNRC, and the United States may agree to modify the reporting requirements set forth in Sections D.1. and D.3., of Article IV. Such modification is pursuant to, and shall not be deemed a modification of, this Compact.

5. All reporting to the United States under this subsection shall be made to the Billings Area Office of the Bureau of Indian Affairs.

F. Enforcement: **Crow-Montana Compact Board.**

1. Establishment of Board. There is hereby established the Crow-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana; one member appointed by the Crow Tribal Chairman; and one member selected by the other two members. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Crow Tribal Chairman, the Director of TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State.

subject to the availability of funds.

2. **Membership.** Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second member, or within thirty (30) days after any vacancy occurs, the following procedure shall be utilized:

a. Within five (5) days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen (15) days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five (5) days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.

3. **Quorum and Vote Required.** Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the Parties to this Compact.

4. **Jurisdiction of the Board.** The Crow-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between the Parties or holders of water rights developed or authorized under the Tribal Water Right and holders of water rights Recognized Under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

5. **Prerequisite Administrative Procedures.**

a. Any holder of a water right Recognized Under State Law concerned that a new development, Change in Use, or Transfer of the Tribal Water Right is inconsistent with the Compact shall first contact the Billings Regional Office of DNRC. If DNRC and TWRD are unable to resolve the issue in a manner acceptable to the water right holder within a reasonable time through discussion, DNRC or the water right holder may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land or to assist DNRC in obtaining reasonable access onto the land of the Tribal Water Right holder to observe the challenged new development, Change in Use, or Transfer.

b. Any Tribal Water Right holder concerned that a new development, change in use, or transfer of water by a holder of a water right Recognized Under State Law is inconsistent with the Compact shall

first contact TWRD. If TWRD and DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, TWRD or the Tribal Water Right holder may seek relief through the Compact Board. DNRC agrees to assist TWRD in obtaining reasonable access onto the land of the holder of the water right Recognized Under State Law to observe the challenged development, change in use, or transfer.

c. TWRD and DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and shall not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys' fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.

b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section F.7.a., of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section F.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV,

may order such temporary or permanent relief as it considers just and proper.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section f.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Crow-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

A. No Effect on Other Tribal Rights or Other Federal Reserved Water Rights.

1. Except as provided in Sections A.1.b.(2). and D.7., of Article III, the relationship between the Tribal Water Right described herein and any rights to water of any other Indian Tribe or its members, or of the United States on behalf of such Tribe or its members shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes or their members outside of the Crow Reservation.

3. Nothing in this Compact is otherwise intended to affect or abrogate a right or claim of an Indian Tribe other than the Crow Tribe.

4. Except as otherwise provided herein and authorized by Congress, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the reserved rights to water of any other federal agency or of any other federal lands. Such reserved rights will be subject to the rule of priority in their use.

B. General Disclaimer. Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right Recognized Under State Law to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;

3. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribe;

4. To limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;

5. To authorize the taking of a water right which is vested under state or federal law;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To address or prejudge whether or how, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;

8. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

9. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;

10. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe or Tribal members, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the enjoyment of the Tribal Water Right;

11. To impair, amend, or alter rights under existing state or federal law;

12. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe or Tribal members within the Reservation or in connection with Tribal Interests in the Ceded Strip;

13. To alter or amend any provision or to adopt or preclude any interpretation of the Yellowstone River Compact, Act of October 10, 1951, ch. 629, 65 Stat. 663 (1951);

14. To alter or abridge any right reserved to the Crow Tribe of Indians under Article 4 of the May 7, 1868 Treaty of Fort Laramie; or

15. To prejudice any right that Tribal members may have to secure a portion of the Tribal Water

Right from the Tribe.

C. **Rights Reserved.** The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. **Obligations of United States Contingent.**

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

2. The State and the Tribe recognize that this Compact has not been reviewed and approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of the United States in the negotiation of all related matters, including but not limited to, coal severance tax, Section 2 of the Crow Allotment Act (41 Stat. 751), water rights, and State and Federal contribution or cost share.

E. **Expenditures of Money Contingent.** The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. **State Contribution to Settlement.**

1. The State agrees to contribute the sum of $15 million, in equal annual installments for a period of no more than fifteen years beginning July 1, 1999, to a fund for the use and benefit of the Tribe.

2. Payment of the State's contributions for the benefit of the Tribe is contingent on the final approval of this Compact by the Tribe and Congress, the final inclusion of the rights set forth in the Compact in decrees by the Montana Water Court and the expiration of the time for appeal from all orders effecting such inclusion or the affirmance of the decrees or orders on appeal, the provision of releases of claims as provided in Section A.4., of Article VI, and the fulfillment of any other conditions to the effectiveness of the Compact.

3. Until all conditions for payment are fulfilled, the State and the Tribe agree that any payments due shall be paid into an interest-bearing escrow account, to be held without distribution of principal or interest until all conditions for payment to the Tribe are satisfied.

4. The Tribe agrees that the State's contribution will be dedicated to economic development and

water and sewer infrastructure within the Crow Reservation. The Tribe further agrees that the State's contributions as set forth in Section A.1., of Article VI and any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and Tribe should be considered as fully satisfying any cost-share obligation on the part of the State for this Compact. The Tribe further agrees that the State's contributions and agreements herein are full and adequate consideration for the Tribe's agreements as set forth in this Compact, and that the State's contributions, together with any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and the Tribe, are full and adequate consideration for the release of all claims by the Tribe and the United States in the civil action captioned Crow Tribe of Indians v. State of Montana, Cause No. CV-78-110-BLG-JDS (D. Mont.). The Tribe further agrees that in consideration of the State's contributions and other agreements set forth in a separate coal severance tax settlement agreement, the Tribe will provide releases of all claims, including any pleadings or proposed orders necessary to implement or otherwise give effect to the releases, in that action in a form acceptable to the Attorney General of the State.

B. **Federal Legislation.** The Tribe and the State agree to support federal legislation ratifying this Compact that will accomplish the following:

1. **Bighorn Lake Water Supply.** The State and the Tribe agree to support federal legislation that will provide an allocation of storage water in Bighorn Lake, as described in Section A.1.b., of Article III and which will reallocate the water in Bighorn Lake as set forth in Section A.1.b.(1).(b).(i)., of Article III. The priority date for the allocation shall be the date of the water right held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA. This allocation shall be held in trust for the Tribe by the United States and will be part of the Tribal Water Right.

2. **Right to Participate in Future Projects to Import Water.** The Tribe shall have the right to initiate or participate in any project to augment the water supply in the Basins listed in Sections B., C., D. and E., of Article III, by transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe to water to a point within the Reservation designated by the Tribe.

3. **Federal Court Jurisdiction.** That the federal courts shall have jurisdiction to enforce the provisions of this Compact and to hear appeals from and enforce decisions of the Compact Board in accordance with Section F.7., of Article IV.

C. **Federal Contributions to Settlement.** Federal contributions to settlement shall be as provided by

Congress.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS, EFFECTIVENESS OF COMPACT, AND WAIVER OF CLAIMS

A. Ratification and Effectiveness of Compact.

1. This Compact shall become Effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest. Upon ratification of this Compact by the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

2. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a Party to this Compact:

a. If Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the State;

b. If appropriations are not authorized by Congress within four (4) years of the date the Compact is ratified by the Tribe;

c. If the Tribe and the United States do not reach agreement on the federal contribution to settlement;

d. If appropriations are not made in the manner contemplated by the federal legislation ratifying the Compact; or

e. If the Tribe and the United States do not reach agreement on settlement of issues regarding Section 2 of the Crow Allotment Act (41 Stat.751).

3. The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Crow Tribal Council stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

4. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw

as a Party to this Compact:

a. If the Tribe and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;

b. If Congress requires a state contribution to settlement that exceeds the contributions described in Section A., of Article VI;

c. If Congress resolves issues under Section 2 of the Crow Allotment Act (41 Stat. 751) in a manner Adversely Affecting water rights Recognized Under State Law;

d. If a streamflow and lake level management plan pursuant to Section A.7., of Article III is not agreed to within one (1) year after this Compact has been ratified by the Montana legislature or any extended deadline agreed to by the State, or if federal legislation is inconsistent with the streamflow and lake level management plan; or

e. If the Department of Natural Resources and Conservation does not approve the list of current uses of the Tribal Water Right pursuant to Section E.2., of Article IV.

5. The State may exercise its right to withdraw by sending to the Crow Tribal Chairman and to the Secretary of the Interior a letter delivered by certified mail from the Governor of the State of Montana stating the State's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

6. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse to support federal legislation ratifying this Compact.

7. The Parties understand and accept that federal financial contributions to the Compact may not be budgeted until October of the year following the year of enactment of the Compact.

B. Incorporation Into Decrees and Disposition of Federal Suit.

1. The Tribe, the State, and the United States agree to defend the provisions and purposes of this Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B., of Article VII.

2. Within one hundred eighty (180) days of the date this Compact is ratified by the Crow Tribal Council, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United

States shall file, in the general stream adjudication initiated by the State of Montana, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Crow Tribe. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and the Tribe. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement of the State and the Tribe. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666, or other provision of federal law.

3. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975) (hereinafter referred to as "Low Line Canal") and such claims may only be refiled if the Tribe exercises its option to withdraw as a Party to the Compact pursuant to Section A.3., of Article VII. This Compact shall be filed as a consent decree in Low Line Canal only if, prior to the dismissal of Low Line Canal as provided in Section B., of Article VII, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate

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to adjudicate, some or all of the water rights asserted in Low Line Canal.

C. Settlement of Water Right Claims. The water rights and other rights confirmed to the Tribe in this Compact are in full and final satisfaction of the water right claims of the Tribe and the United States on behalf of the Tribe and its members, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe and Tribal members hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the State of Montana existing on the date this Compact is ratified by the State, the Tribe, and Congress and conditional upon a final decree, whichever date is later.

D. Binding Effect. After the Effective Date of this Compact, its terms shall be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe, Tribal members, and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe or a Tribal member, or any right arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law.

E. Waiver of Claims or Objections.

1. After the Effective Date of this Compact, the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe or a Tribal member, shall be prohibited from objecting to, or bringing a claim against, the claim or holder of a right to use water

based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the assertion that such right is invalid because 85-2-301(4), MCA, is invalid as applied to such right, or that such right is inconsistent with or otherwise impairs any right reserved by the Tribe under Article 4 of the May 7, 1868 Treaty of Fort Laramie. If and to the extent necessary to effectuate the intent of this paragraph the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe shall be deemed to have waived and relinquished any claims or objections they may have against a holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the aforementioned law and Treaty.

2. Waiver of claims by the Tribe against the United States shall be as provided by Congress.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Crow Tribe, and the United States have signed this Compact on the ___ day of____, 19____.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA SENATE
56th LEGISLATURE - SPECIAL SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on June 15, 1999 at 10:15 A.M., in O'Connell Hall, Carroll College.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: Sen. Glenn Roush (D)

Staff Present: Todd Everts, Legislative Branch
Jodi Pauley, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 1, 6/15/1999
Executive Action: SB 1

HEARING ON SB 1

Sponsor: **SEN. MACK COLE, SD 4, Hysham**

Informational Testimony:

Clara Nomee, Chairwoman of Crow Tribe
Chris Tweeten, Chairman, Reserved Water Rights Compact Commission
Faye Bergan, Legal Counsel, DNRC, Reserved Water Rights Compact Commission

Proponents:

Joe Mazurek, Attorney General
Eloise Pease, Crow Tribe
Mark O'Keefe, Self
James Korski, Attorney, Hardin, Montana
Dennis Big Hair, Sr., Crow Tribal Secretary
David Turns Plenty, Jr., Crow Tribe
Pat Graham, Director, Department of Fish, Wildlife and Parks
Joseph Pickett, Crow Tribe
SENATOR REINY JABS, SD 3, Hardin
Lorna Karn, MT Farm Bureau
Jerry Jones, Bighorn Livestock Association
Geuila Frost, Crow Tribe
Jack Stults, DNRC
Cedric Black Eagle, Water Right Conservation Team
Laura Ziemer, Trout Unlimited
John Bloomquist, Montana Stockgrowers
Bernard Cummins, Crow Tribe
Charlene Laverdure, Crow Tribe
Pat Riley, DNRC
Cornelius Little Light, Crow Tribe
Art Alden, Crow Tribe
Joe Lamson, Office of Public Instruction
Dan Whyte, Secretary of State's Office
David Turns Plenty, Sr., Crow Tribe
Ernie Robinson speaking for Joe Walks Along, Northern Cheyenne Tribe
Phil Beaumont, Sr., Crow Tribe
Urban Bear Don't Walk, Crow Tribe
Bob Kelly, Crow Tribe
Crow Tribal Council

Opponents:

REP. BILL EGGERS, HD 6, Crow Agency
Kathleen Harris, Crow Tribe
Glenn Jackson, Crow Tribe
Mike Not Afraid, Crow Tribe

Leroy Not Afraid, Crow Tribe
Lance Hogan, Children of Crow Tribe
Larny Little Owl, Crow Tribe
SEN. RIC HOLDEN, SD 1, Glendive
Frances Harris, Self
Angela Russell, Crow Tribe
John Chaffin, U.S. Department of Interior
Bear Rider Chipmunk, Indian Landowners Assoc.

Minutes

Minutes from May 21, 1999, Crow Public Meeting
Minutes from June 1, 1999, Summary of Crow Public Meeting
Minutes from June 1, 1999, Executive Session

Opening Statement by Sponsor:

SEN. MACK COLE, SD 4, Hysham, said this is a bill to ratify the water rights compact between the Crow Tribe and the State of Montana. This is the fourth water rights tribal settlement that has been worked on between the State and the Tribe and this is not a new issue. He discussed the different types of water rights that the U.S. has. The first is the Riparian Water Rights which are found mostly in the eastern U.S. The second is Appropriated Water Rights that is made with the state for an appropriated amount of water. This is called first in time is first in use. The one that the Compact deals with is called Reserved Water Rights. He said when there are federal reservations or public lands, etc. there is water set aside for whatever purposes it is needed for. In the case of the Indian reservation it is used mostly for agricultural purposes.

He said there are two ways they can go with this legislation. They can go with a Compact where both sides come together with a common goal. Or it can end up in litigation where a judge will determine how much water the Crow Tribe will get. He said if this Compact is approved and ratified by the state courts then all cases will be dismissed concerning this Compact. He said the Crow Tribe and the State have been working on this since the early 1980s and this is not a new issue. He did some history on the Crow Reservation. He said at one time the Crow Reservation had more than 38 Million acres in it and now it only has around two Million acres. He said the reservation has a ceded strip of a million acres which the Crow tribe ceded to the U.S. Government in 1904. He said when the 1920 federal law was passed certain

allotments were made available to the tribe. Then in 1958, land that had not been taken up in the ceded strip was returned to the tribe and those lands are community owned versus individually owned. He said if this Compact is approved it still has to go before Congress. He said in April at the Crow Tribal Council meeting they voted unanimously for this Compact and the Compact Commission also approved it. He said **SB 1** will quantify the water on the Crow Reservation. He said right now it is very difficult to do development, etc. when they don't know how many acre feet of water they have. He said it also protects downstream users and their water rights will be recognized.

He said the second issue of this Compact is the Crow Tribe over a 10 year period will receive $15 Million after the final approval of the Compact and this will settle the coal severance tax.

He said the third issue that won't be covered is a federal issue. He said in section 2 of the 1920 allotment act, it stated that nobody could own more than 640 acres of farm land and 1280 acres of domestic land. It was amended in the late 1930s that exempted tribal members from this restriction. He said since that time there has been numerous people on the reservation than have more than 1920 acres of land that they own. This is a Federal issue and as a state they will assist in any way that they can.

{Tape : 1; Side : A; Approx. Time Counter : 10:34 a.m.}

Informational Testimony:

Clara Nomee, Chairwoman of Crow Tribe, rose in support of **SB 1. EXHIBIT(1)**

{Tape : 1; Side : A; Approx. Time Counter : 10:45 a.m.}

Chris Tweeten, Chairman, Reserved Water Rights Compact Commission, said in 1979 the water rights compact commission was created. He said they were required to initiate negotiations with tribal governments and that has been done since the creation of the commission. This Compact has been going on since 1981. Government to government negotiation of these issues is the only way that they can conduct these negotiations. He said before this Compact can be totally accepted it has to be voted on by secret ballot by all of the tribe. If the Legislature votes against this Compact now the tribe will never know if they would approve it or

not. This is only the first step in getting this Compact ratified.

{Tape : 1; Side : A; Approx. Time Counter : 10:53 a.m.}

Faye Bergan, Legal Counsel, DNRC, Reserved Water Rights Compact Commission, passed out a table of contents to the bill. **EXHIBIT(2)** She discussed where the Crow Reservation is, the ceded strip, and water court basins in Montana. **EXHIBIT(3) EXHIBIT(4) EXHIBIT(5) EXHIBIT(6)** She said there is an interstate compact between Montana and Wyoming concerning allocation of the Big Horn River. This was ratified by Congress in 1951 and Wyoming has attended all of the negotiating sessions. **EXHIBIT(7)** She said there is significant non-Indian water rights development off the reservation downstream and there is also development within the reservation that all needs to be taken into consideration. The Compact provides for a quantification of the Crow's water rights on the Big Horn. The quantified water rights for the reservation is 500,000 acre feet of water from natural flow. 150,000 of that is already used for irrigation within the reservation. That would leave 350,000 acre feet for future development and tribal use. The tribe will also get an allocation of storage water and this is 300,000 acre feet. She said there is also protections for Indians and non-Indians both on and off the reservation. All existing water rights will be protected and all new rights created will be junior to existing water rights. It will not affect anybody's ability to change or transfer water rights. She said a lot of land on the Crow Reservation has gone from Indian owners to non-Indian. Therefore, rather than being on a trust status it has gone to a fee status. The tribe would like to acquire more of these lands and consolidate their water rights. The Compact provides that when land is purchased with certain water rights at such time if the land goes from fee to trust status the water rights will be incorporated into the tribal water rights and will have a May 7, 1868 priority date. She said this same type of Compact was used in the Tongue River Basin. There is also a Compact between the Crow and Northern Cheyenne Tribe. She said water rights that are recognized under state law are administered by state, and tribal water rights are administered by the Tribe. She said if there are disputes between tribal water users and state users the Compact sets up a resolution board to avoid having to go to court. She discussed the ceded strip. **(EXHIBIT 6).** She discussed some of the impacts on the Yellowstone River. Flood control is governed by Federal

Law and will continue to be the same. In the case that the natural flow is lower than 350,000 acre feet then the tribe has to reduce its use, use part of its storage to supplement its use or call Wyoming to get more water. She also discussed in-stream flow. She said there is a productive fishery called the Tail water fishery created by the dam. The Compact has a provision to develop a management plan with the U.S., State and Tribe. This has to be developed within one year after the Compact is ratified. If the State cannot agree to the management plan with the other parties then there is an opt out provision in the Compact.

{Tape : 1; Side : B; Approx. Time Counter : 11:16 a.m.}

Proponents' Testimony:

Joe Mazurek, Attorney General, said this is a good deal for both the state and the tribe as it has been negotiated in good faith between the two governments. It is better to come to the table and create a resolution rather than spending hours in litigation. He said this Compact is resolving the litigation over the coal tax. They are also resolving the water rights of the tribe and non-Indian users. The $15 Million will buy peace, settlement of a lawsuit and a cost share that they will have to pay under federal law.

Eloise Pease, Crow Tribe, said their Constitution states that they have to act in council if they want something done that represents the entire tribe. She said they did that and they had over 600 people in attendance who were for the Compact. This is very good for the tribe and the State of Montana. Historically, the Crow people have always gotten along with the non-Indian people and this is another time in which they are trying to settle some old problems.

Mark O'Keefe, Self, said he has worked extensively with water issues. He said this process was not done hastily and supports government to government relationships. He said it is important to get water quantified and to move this process along.

{Tape : 1; Side : B; Approx. Time Counter : 11:30 a.m.}

James Korski, Attorney, Hardin, Montana, said the Crow Tribe did not considered this Compact recently, but have been at it for

many years. Both reservation and non-reservation water rights would be recognized and would decrease litigation.

Dennis Big Hair, Sr., Crow Tribal Secretary, stated that this Compact was passed unanimously by the Crow Reservation and the State of Montana recognizes Indian cultural and traditional ways. Water is the main source of life and Indians and non-Indians must work together. This Compact will allow all parties involved to work together in all areas from agriculture to recreation. This is a chance for all of them to work together and create a better economy on the reservation.

David Turns Plenty, Jr., Crow Tribe, rose in support of **SB 1. EXHIBIT(8)**

Pat Graham, Director, Department of Fish, Wildlife and Parks, turned in testimony and a Memorandum of Understanding in support of **SB 1. EXHIBIT(9)**

Joseph Pickett, Crow Tribe, said water is a key element to sustain life and in protecting their cultural needs. He said working together can bring together two totally different forms of government and this has been very good for the State and the Tribe.

{Tape : 2; Side : A; Approx. Time Counter : 11:50 a.m.}

SENATOR REINY JABS, SD 3, Hardin, said this Compact is fair for everyone involved and it is important that the issue is settled. The Compact protects all existing water right holders both on and off the reservation as well as in the Conservation districts. This Compact will be better than doing litigation and will take less time and create better cooperation. It is essential for future growth of their area and is the first step toward reaching those goals.

Lorna Karn, MT Farm Bureau, turned in testimony in favor of **SB 1. EXHIBIT(10)**

Jerry Jones, Bighorn Livestock Association, said he and his father in the early 1970's filed for water rights. These rights have not be adjudicated and cannot be adjudicated until the Crow Tribe develops their own Compact. The Compact would be beneficial to the Crow tribe and would settle many water rights issues.

Geuila Frost, Crow Tribe, rose in support of **SB 1.**

Jack Stults, DNRC, turned in testimony in favor of **SB 1. EXHIBIT(11)**

{Tape : 2; Side : A; Approx. Time Counter : 12:00 p.m.}

Cedric Black Eagle, Water Rights Conservation Team, said it is fair that the Crow Tribe be protected like the non-Indians and this is a win-win situation for everyone.

Laura Ziemer, Trout Unlimited, said there is an in-stream flow reservation on the Big Horn river. That reservation is very important to protecting the wild trout fishery below the Big Horn dam and is vital in protecting long term future water development. This water in-stream flow reservation is the only water right not protected under the Compact. Instead there is a stream flow and lake level management plan proposed in the Compact and that standing alone is insufficient in protecting in-stream flows. In-stream flow is very important to protect in the future for three reasons. The public involvement is important, water must be dedicated to in-stream flows, and the state has to realize that they can withdraw from this Compact if an in-stream flow management plan is not achieved.

John Bloomquist, Montana Stockgrowers, said this is not a perfect agreement, but it is very beneficial and resolves water rights issues and Section 2 issues. He said their organization urges resistance of any amendments to this Compact. He also turned in testimony from Chuck Fuller, Rancher in Hardin, MT. **EXHIBIT(12)**

Bernard Cummins, Crow Tribe, said this Compact is fair for all parties involved.

Charlene Laverdure, Crow Tribe, said the negotiating team has spent a lot of volunteer time traveling around the reservation studying different water issues in the communities. This is not a rushed deal and has been studied very well.

Pat Riley, DNRC, said they have spent a lot of time informing the people of the reservation about the Compact. He turned in letters of support for the Compact. **EXHIBIT(13)** If the Compact is

approved then many creeks and areas would be ready for adjudication.

Cornelius Little Light, Crow Tribe, said this is right for the Crow Tribe because they are not isolated any more.

Art Alden, Crow Tribe, said he has worked on water rights since 1995 and the fairest way to settle water rights is through a negotiated process.

Joe Lamson, Office of Public Instruction, said this will be good for the state, tribe and private land owners in the area.

Dan Whyte, Secretary of State's Office, said they support the process and the negotiations that have gone on.

David Turns Plenty, Sr., Crow Tribe, said this is fair for all sides and this is the right way to solve this issue and to bring their tribe together.

Ernie Robinson speaking for Joe Walks Along, Northern Cheyenne Tribe, turned in testimony of the Northern Cheyenne Tribe. **EXHIBIT(14)**

Phil Beaumont, Sr., Crow Tribe, said they depend on water for many things. And the Tribe will be able to vote on this before the Compact becomes final and this is important.

Urban Bear Don't Walk, Crow Tribe, stated the Compact is fair and he cannot find any opposition in it.

Bob Kelly, Crow Tribe, turned in testimony in favor of **SB 1.** **EXHIBIT(15) EXHIBIT(16)**

Crow Tribal Council turned in a petition of support for **SB 1.** **EXHIBIT(17)**

{Tape : 2; Side : B; Approx. Time Counter : 12:30 p.m.}

Committee took a 15 minute break from 12:30 to 12:45 p.m.

Opponents' Testimony:

REP. BILL EGGERS, HD 6, Crow Agency, rose in opposition of **SB 1. EXHIBIT(18)** He said no one has addressed the allottees legal rights and they are not represented in the Compact. He said as an allottee the federal government owns that land and holds it in trust for him for his beneficial use. The tribe has its own land and holds it much like the State of Montana holds land. Allottees have a mutually exclusive legal right to water exclusive of the tribe. The federal, state and tribe are all addressed in the Compact, but it leaves out the allottees and this could create a lawsuit. He said this Compact is premature at this time because they have not been included in the discussions of the Compact. He said section 2 is so integrated into this Compact and could be a problem at the Federal level.

{Tape : 2; Side : B; Approx. Time Counter : 1:02 p.m.}

Kathleen Harris, Crow Tribe, rose in opposition of **SB 1.**

Glenn Jackson, Crow Tribe, said this is the foundation in which section 2 will be settled. He said when the Crow Act of 1920 was passed the Crows were not farmers or prairie Indians, they were in transition. And this was taking advantage of the Crow before they were prepared and ready. Limiting 180 acres to each family and limiting non-Indian ownership to a 1000 acres was not fair. He said there are people on the reservation that own 250,000 acres. He said there are many who own only a fraction of land as it is owned by many different people. He said to get land from trust to fee is not easy. To get land back the other way takes an act of Congress. White people cannot be trusted when they start to deal with Indians. He said the Tribe is not ready for this Compact yet and there will be more lawsuits with the passage of this bill.

Mike Not Afraid, Crow Tribe, read a petition from the Crow people who are against the Compact. **EXHIBIT(19)** He also turned in testimony against **SB 1. EXHIBIT(20)**

{Tape : 2; Side : B; Approx. Time Counter : 1:15 p.m.}

Leroy Not Afraid, Crow Tribe, said he is opposed of this legislation in its present form. All sides of the issue needs to

be looked at carefully for future generations. He said litigation brings out turmoil within a society and negotiation is an awesome approach. This negotiation process is premature as the allottees have never been represented in this process. He said the treaties of 1851 and 1868 recognize the water rights belonging to the Crow nation. Forty-nine percent of the reservation is owned by non-Indians. The political hidden agenda of this Compact is to compromise water for section 2 and coal severance tax issues.

{Tape : 2; Side : B; Approx. Time Counter : 1:22 p.m.}

Lance Hogan, Children of Crow Tribe, said the children have no representation concerning their future and how the Compact will affect them. The State is taking away billions of cubic inches of water from the tribe and this is not fair.

Larny Little Owl, Crow Tribe, said the tribe is not protecting allottee rights in this Compact. He said as a land user and an irrigator he plans to use his water and he doesn't want any one controlling that water on his land. This is his God-given right and he has fair access to those waters.

SEN. RIC HOLDEN, SD 1, Glendive, said when water is controlled, power is controlled. He said he would defend the water rights of the Indian people on the reservation, but they also have to defend the water rights of people who live downstream. He said Farm Bureau and Stockgrower members who live downstream by in large do not support this Compact. If this Compact passes they will be setting water policy for probably the next 100 years. He said it is not right that the Crow Tribe should have the ability to sell water to U.S. citizens after it leaves the borders of the Crow Reservation. He passed out amendment SB000103.agp and discussed it. **EXHIBIT(21)** He said they currently do not purchase water from the Crow Tribe for future water development. He said on page 9, he would like to add another amendment SB000104.agp to address the streamflow and lake level management plan. **EXHIBIT(22)** These amendments will send the management plan back to the legislature for final approval and to see if it is fair. SB000105.agp develops a flood management plan. **EXHIBIT(23)** He said they do not want to be flooded out every year. To say that the Yellowtail dam on the Big Horn River does not affect the flow of the Yellowstone during periods of high water is just not true. He said on page 20, lines 25 and 27, he would like to add

amendment SB000106.agp. **EXHIBIT(24)** He discussed amendment SB000107.agp. **EXHIBIT(25)** Amendment SB000108.agp would require that the tribe pay their proportional share of maintenance on the Yellowtail dam. **EXHIBIT(26)**

{Tape : 3; Side : A; Approx. Time Counter : 1:38 p.m.}

Frances Harris, Self, said the ceded area was given back to the Indians because the white man could not make a living on it. She said this Compact is violating the enabling act and violating the Crow Indian treaty. She said the U.S. Constitution is the law of the land, followed by treaties which include American Indian treaties, and then the state's rights. The State of Montana has no right to get into the Crow's business, this is between the Federal government and the Crow Indians. Everything has to be fair, but this Compact is not fair.

Angela Russell, Crow Tribe, said she has some allotted lands and she wants to be able to irrigate those lands. She wants to make sure that they are going to have water rights to their land. She said they want this Compact, but it needs some changes. She said there is going to be 500,000 acre feet of water available, but they do not know what that means as to whether it is going to go into a tribal pot or how it will be allotted. She said the General allotment act of 1887, split up their land so that they had allotted lands. This is like owning private property and rights go along with this property. She said when the 1908 Doctrine was passed it clearly stated that Indian tribes and allottees had reserved water rights with their land. She said on page 43 and 44 of the bill it is confusing in that non-Indians will have more senior rights than Indians on the reservation. She said Indians are very environmental people and they have two types of fish and one is threatened. This is called the Yellowstone Cutthroat and this Compact does not address those environmental needs that are on the reservation. She said perhaps the way to solve these issues is with a referendum.

John Chaffin, U.S. Department of Interior, rose in opposition of **SB 1. EXHIBIT(27)**

{Tape : 3; Side : A; Approx. Time Counter : 2:02 p.m.}

Bear Rider Chipmunk, Indian Landowners Assoc., said their concern is that the landowners have not been properly informed. He said

they are going to hear from landowners all over the state concerned with this Compact. Landowners have water rights and they need to be listened to and not so much the tribe. This is a jurisdictional issue and the State of Montana does not have a treaty with the Indian people and they should not be dealing with this Compact.

Minutes

Minutes from May 21, 1999, Crow Public Meeting EXHIBIT(28)
Minutes from June 1, 1999, Summary of Crow Public Meeting EXHIBIT(29)
Minutes from June 1, 1999, Executive Session EXHIBIT(30)

Questions from Committee Members and Responses:

SEN. DALE MAHLUM asked if the U.S. Department of Interior was involved in the negotiations. **John Chaffin** said negotiations with the Crow Tribe began many years ago and they were renewed in earnest three or four years ago and he was appointed to the Federal negotiating team. He said they have been involved in these negotiating processes, however, in November of this year the Crow Tribe asked the Governor to work at an accelerated pace. The Federal Government was not a part of some of the earlier discussions, but they have attended many of the negotiations since then.

SEN. MAHLUM asked about the cost of the program. **John Chaffin** said they have a concern that the amount that has been appropriated by the State is too low. He said the way the Compact is drafted all existing water rights and uses are to be protected. He said their would be a dramatic disruption of water use in these drainages. The Department of Interior thinks that the State should contribute its proportionate share of the benefit that they will receive from this Compact. The recreational interests alone are between $16 to $18 Million and the farming and municipal uses are worth several hundred million. $15 Million is not proportionate to the benefit that is going to be received.

SEN. LORENTS GROSFIELD said when they did the Northern Cheyenne Compact there was the same concern that there was not enough state money. However, the federal government did not oppose this in Congress. He asked if this Compact went to Congress the way it

is would it not be approved? **John Chaffin** said one of the factors that will go into their consideration will be the state's contribution. At this point the Secretary's office thinks it is too low.

SEN. GROSFIELD quoted from a letter on page 2 from the Deputy Secretary of the Interior to REP. EGGERS. **EXHIBIT(31)** He also quoted on page 2 and 3 of a memorandum dated March 30, 1995 from the U.S. Department of Interior. **EXHIBIT(32) John Chaffin** said the position that the Federal team took in the negotiation was that the dully constituted government of the Crow Tribe has the regulatory power over tribal water rights. He said in 1882 under the Dawes Act, Congress decided that part of the tribal water right could be allocated down to allottees for varied use. He said they felt that it was proper for the State and the Federal team to negotiate with the dully constituted government and their negotiating team. He said there are certain members of the Crow tribe who on their allotments have exercise their tribal right and have put that water to beneficial use. He said the Compact does not take away any of those rights in their opinion. He said those that have existing rights will continue to use it as they have historically and this language is adequate.

SEN. GROSFIELD asked if the allottee's water rights are part of the tribal water rights and does the Federal negotiating team feel that they are protected in this Compact. **John Chaffin** said yes.

SEN. TOM KEATING asked if those allottees that have water rights are afraid that their rights are going to be reduced because the tribe is giving up certain water rights. He said he would like to make sure that what the tribe has already claimed will not be reduced. **John Chaffin** said the amount of water that they are historically using now, the Compact specifically requires that the Crow Tribe continue to use that amount.

SEN. GROSFIELD asked if Chris Tweeten had anything to add. **Chris Tweeten** said tribal allottees are entitled to a proportionate share of the tribal water right as a matter of federal law. He said several members of the Crow tribe negotiating team are allottees themselves and have been represented at the negotiations. He said the Compact specifically preserves the status of allottees on page 25, line 21-25. He said there are also disclaimer provisions on page 38 and 39 that protect the allottees.

Bob Kelly, Crow Tribe referred to his testimony **(EXHIBIT 15 and 16)**. He said allottees are people who have been allotted a certain amount of land. Most of these people are landowners and not allottees and many landowners sat on the negotiating committee. He said water rights are given out on an equal share. Federal law has already determined that allottees have to have a fair and equitable amount of water.

Karen Fagg, Natural Resource Consultant for the Crow Tribe, referred to the testimony of REP. EGGERS on his handout on "Walton Rights: Little Law and Big Policy." **(EXHIBIT 18)** She said the tribe holds water rights in common for the benefit of all tribal members. This article supports what this Compact is trying to accomplish.

SEN. KEATING asked if the tribal allotment is entirely distributed and are allottee's water use rights exceeding the amount of tribal water. **Karen Fagg** said no. She said there is a significant amount of water that is not being utilized.

SEN. KEATING said there is a reference to historic use and does that mean that they cannot expand on uses and applications. **Karen Fagg** said no the compact protects all existing users.

SEN. MIKE TAYLOR asked how much has been spent on litigation to date. **Chris Tweeten** said on the water rights side of the settlement the Compact Commission staff appropriates $.5 Million per year. He said on the severance tax litigation they have spent approximately $3-$5 Million.

SEN. TAYLOR said if this Compact passes will there be an end to litigation or will it keep going on. **Chris Tweeten** said it is impossible to avoid litigation.

SEN. TAYLOR referred to John Chaffin's letter **(EXHIBIT 27)** and was Chris Tweeten aware of this. **Chris Tweeten** said yes. He said this is the fourth tribal compact that has been brought to the Legislature. The last three have been opposed by the Federal Government at the legislative stage. He said however, after working with them, all of those Compacts have been agreed to.

SEN. TAYLOR said on the Flathead Reservation they have a lawsuit right now with the tribe and state concerning groundwater. Will this lawsuit affect this Compact? **Chris Tweeten** said in the absence

of a compact that quantifies the tribes water rights, DNRC cannot determine whether available water exists for the issuance of state ground water permits. He said if the Crow Compact is agreed to and becomes affective groundwater issues will not be a concern on the Crow Reservation.

{Tape : 3; Side : B; Approx. Time Counter : 2:40 p.m.}

SEN. BEA MCCARTHY asked if the Federal's biggest concern is they are not paying the Crow tribe enough. **John Chaffin** said that is one concern, but they are also concerned with storage and stream flow management.

SEN. MCCARTHY asked if those concerns were taken care of would the Federal government be in favor of the Compact. **John Chaffin** said they have one year to work on stream flow management and storage, etc. However, those tasks are more vast than what the tribe and the commission are acknowledging and it may lock them down from making some of these changes if the Legislature ratifies this right now.

SEN. KEATING said his concern is with the level of stream flow on the Big Horn as it enters into the Yellowstone. He asked if the Compact works in any way to lower the level of in stream flow adversely that would affect the fisheries, etc. **Faye Bergan** said the water uses within the reservation and on the Big Horn have significant return flows from existing irrigation, etc. and these are protected under the Compact.

SEN. KEATING asked how much stream flow does Big Horn contribute to the Yellowstone. **Faye Bergan** said on an average year it is 2.6 Million acre feet.

SEN. KEATING asked what percentage of that is made up in the Yellowstone stream flow. He asked if water from the Big Horn was totally cut off, would the Yellowstone still satisfy all the downstream water users. **Faye Bergan** said she did not know. But under this Compact the Big Horn would probably never dry up because of the protections in the Compact.

SEN. STEVE DOHERTY asked if power rates would increase $10 to $20 Million for Montana consumers if this is passed, and would they have these additional revenues from Yellowtail Dam. **John Chaffin** said it is possible. However, they have started to build a scenario

with the Bureau of Reclamation and the Western Area Power Administration to prevent this from happening.

SEN. DOHERTY asked if the State of Montana would oppose any increase in power rates for power users out of Yellowtail dam to satisfy section 2 or other concerns. **Chris Tweeten** said he does not know if the State of Montana has a formal position on that issue.

SEN. DOHERTY said power rates is money out of people's pockets and the State should not saddle its consumers with increased power rates to pay for this issue. **Chris Tweeten** said this issue can be addressed as the Compact goes before Congress.

SEN. DOHERTY asked if the 300,000 acre feet that comes from the Yellowtail dam is sufficient or should it be more or less. **John Chaffin** said the 300,000 came about by negotiation and this is an average yield in the conservation pool.

SEN. DOHERTY asked once the tribe adopts the tribal water code will the tribe exercise exclusive jurisdiction over all new uses of surface and groundwater within the reservation and trust land in the ceded strip. **John Chaffin** said that is correct with a few exceptions. He said any new development would be a part of the tribal water right.

SEN. DOHERTY asked with the passage of the Compact, if section 2 owners have a water right and they go into trust status, would the tribe get these water rights or would it go against them. **John Chaffin** said non-Indian uses would have a significant impact on tribal water use. The tribe believes that they will be able to buy that land back and it will become a part of the reservation. This is one of their primary goals is to block up the land and the priority dates will become almost irrelevant. They believe there will not be a shortage of water if this land is blocked up.

{Tape : 3; Side : B; Approx. Time Counter : 2:55 p.m.}

SEN. DOHERTY said if they could market 50,000 acre feet of water off the reservation and they sell it to Los Angeles and it gone, what happens in the low irrigation years to downstream users. **Faye Bergan** said that 50,000 acre feet could be stored by the reservation. This is all carryover storage and would not necessarily be released for downstream irrigators. Water marketing

is a benefit to the tribe and is not a huge amount of water and will hardly affect downstream users.

SEN. DOHERTY said there is language in the Memorandum of Understanding (paragraph 5) that there will be public input if it is a good idea, but if it is not a good idea they will negotiate in secret session. **(EXHIBIT 9)** How does this comply with public participation statutes in Montana. **Chris Tweeten** said this language is consistent with the Reserved Water Rights Commission policies.

{Tape : 4; Side : A; Approx. Time Counter : 3:03 p.m.}

Closing by Sponsor:

SEN. COLE said the allottees do have a right to their water on their lands. Trust lands can be owned by the U.S., tribes or for individuals and they still have the U.S. Government in there as a trustee looking at that. The State of Montana is working with the government of the tribe and the trustee which is the U.S. government. The state should not get involved in tribal governmental affairs on the reservation. And if they do not have representation at some of these meetings, they need to work that out amongst themselves and leave the state out of those affairs.

He said the Secretary of Interior in 1975 imposed a moratorium on the approval of tribal water codes to give the department time to create guidelines for approval.

He said there has been some concern with downstream users from the Big Horn River and they have been working with the Bureau of Reclamation on those management problems. He said there is leasing of water by the Bureau all the time. Other Compacts have the same language as this one has and they are working fine. He said there are two forms of land in the ceded strip. Those allotted lands in 1920 and lands that had not been taken up by allotments were given back to the tribe in 1958. He said the Federal government in the past has not always supported other Compacts and those problems have been worked out.

{Tape : 4; Side : A; Approx. Time Counter : 3:13 p.m.}

EXECUTIVE ACTION ON SB 1

Discussion:

SEN. GROSFIELD said he would like SEN. HOLDEN's amendments explained.

Faye Bergan explained the amendments SB000103.agp through SB000108.agp. **(EXHIBIT 21 through 26)**

Karen Fagg said they would like to have all of these amendments rejected because it may weaken the Compact.

SEN. HOLDEN said this Compact is not set and they cannot vote on something that is not whole. There is no flood management plan in place and this is not right. He asked the question of who is bargaining for the citizens of the State of Montana and their rights? He discussed amendment SB000107.agp on tribal water regulations and authority. **(EXHIBIT 25).** He said if these issues are not spelled out in the Compact right now they may never be addressed. The tribe should be able to pay for their fair share of maintenance for the dam as they are storing water for their own use and the ability to sell water off the reservation. He said what if the tribe decides to sell water downstream in a high water period? The management plan needs to be in place to address these issues.

SEN. GROSFIELD said on page 23, line 26 it talks about a water marketing provision and what does this language mean. **Faye Bergan** said the only water that can be used outside the reservation is the water market provision and the administration is restricted to those limitations and uses on and off the reservation.

Motion: **SEN. GROSFIELD** moved **AMENDMENTS SB000103.AGP THROUGH SB000108.AGP. (EXHIBIT 21-26)**

{Tape : 4; Side : A; Approx. Time Counter : 3:30 p.m.}

Discussion:

SEN. COLE said the Bureau of Reclamation and the Federal Government are going to continue their same working relations that they have had before and some of these issues are being

taken care of. He said he would not support any of these amendments at this time.

Vote: Motion **failed 0-10** on a roll call vote.

SEN. TAYLOR said he had amendment SB000101.agp and SB000102.agp to present to the committee. **EXHIBIT(33) EXHIBIT(34)**

Todd Everts, Legislative Council, explained amendment SB000101.agp. He explained 2,5,9,11,13,19,20 and that they could be taken out. He said all of these amendment deal with junior water rights.

Faye Bergan said the tribe came to them with this proposal that their existing water rights be protected and that new water development would be junior to existing water rights both Indian and non-Indian. She said junior would have only certain rights during times of shortage. She said to add these amendments would erode future development by the tribe and would be a fundamental change in the Compact.

Todd Everts explained amendments 3,6,10,12,14. He said amendments 1 and 4 are related, they clarify tribal rights of irrigable acres within the basin and the State of Wyoming. Amendment 7 is technical in nature. He discussed amendments 8 and 15. He said that amendments 16-18 are related and he explained them. He said amendments 21 and 22 are technical in nature. He discussed amendments 23 and 24.

SEN. TAYLOR said he would like Karen Fagg to comment.

Karen Fagg said these amendments dramatically changes the Compact and if these changes were adopted they would lose support for this Compact. She said existing uses have to be protected and the tribes ultimate interest is to reacquire lands and the water that is available with them.

REP. EGGERS explained amendment SB000101.agp. **(EXHIBIT 33)** He also explained amendment SB000102.agp. **(EXHIBIT 34)**

{Tape : 4; Side : A; Approx. Time Counter : 3:45 p.m.}

SEN. GROSFIELD said subordination is a major change and he could not support that. He said the amendment would open the basin if there was no affect on tribal groundwater and surface water permits and the DNRC could issue those permits. This amendment loosens those standards rather than tightening them up.
REP. EGGERS said he wanted to eliminate contentious areas where allottees may have not been considered or included in tribal affairs. He said he did not want to open up groundwater rights he wanted allottees to have groundwater rights like everyone else has.

SEN. GROSFIELD asked if sovereign immunity only extends to government entities and not individual allottees. **REP. EGGERS** said if the tribe nor the bureau is not negotiating on behalf of the allottees then the tribe waives it sovereign immunity to all water rights and it may be waiving its governmental protection that it is supposed to provide allottees.

SEN. GROSFIELD said the allottees interests are not protected within the Compact and they are part of the tribal water rights and they are protected with respect to use and authority and he cannot support these amendments.

SEN. COLE said what they have is reserved water rights and the individual land owners are part of that total reserved water rights. Both are protected, in this Compact, under an equal basis and he could not support these amendments.

Motion/Vote: **SEN. TAYLOR** moved **AMENDMENTS SB000101.AGP. Motion failed 1-9 on a roll call vote.**

Motion: **SEN. TAYLOR** moved **SB000102.AGP.**

Discussion:

SEN. TAYLOR said that they have been assured that the allottees in this Compact have been taken care of.

SEN. GROSFIELD asked if an allottee with a water right tried to enforce the use of that water right, what priority date would that allottee be dealing with? **REP. EGGERS** said the allottee has the treaty date of 1868. This could be a problem if there is an

allottee and a non-Indian landowner who are joining one another. If they are exempt, then this gives them time to exam this.

SEN. GROSFIELD said without this amendment the priority date is 1868. He thinks that adopting this amendment would lead to litigation.

Vote: Motion **failed 0-10** on a roll call vote.

Motion/Vote: **SEN. GROSFIELD** moved that **SB 1 DO PASS. Motion carried unanimously 10-0** on a roll call vote.

ADJOURNMENT

Adjournment: 3:58 P.M.

SEN. WILLIAM CRISMORE, Chairman

JODI PAULEY, Secretary

WC/JP

All amendments for SB 1 By Sen Grayson
SB 000103 - SB 000103

Roll Call Votes

Natural Resources Committee

Name	Yea	Nay
Sen. Crismore, Chair		X
Sen. Cocchiarella		X
Sen. Cole		X
Sen. Grosfield		X
Sen. Keating		X
Sen. Mahlum		X
Sen. McCarthy		X
Sen. Miller		X
Sen. Roush		
Sen. Taylor		X
Sen. Wilson		X
Totals		10

failed

Sen. Taylor moved amendment SB0001/01. 2gp.

Roll Call Votes

Natural Resources Committee

Name	Yea	Nay
Sen. Crismore, Chair		X
Sen. Cocchiarella	X	
Sen. Cole		X
Sen. Grosfield		X
Sen. Keating		X
Sen. Mahlum		X
Sen. McCarthy		X
Sen. Miller		X
Sen. Roush		
Sen. Taylor		X
Sen. Wilson		X
Totals	1	9

failed

Sen Taylor moved amendment LB 000108.ajp

Roll Call Votes

Natural Resources Committee

Name	Yea	Nay
Sen. Crismore, Chair		X
Sen. Cocchiarella		X
Sen. Cole		X
Sen. Grosfield		X
Sen. Keating		X
Sen. Mahlum		X
Sen. McCarthy		X
Sen. Miller		X
Sen. Roush		
Sen. Taylor		X
Sen. Wilson		X
Totals	0	9

failed

SB 1 moved by Sen. Grosfield

Roll Call Votes

Natural Resources Committee

Name	Yea	Nay
Sen. Crismore, Chair	X	
Sen. Cocchiarella	X	
Sen. Cole	X	
Sen. Grosfield	X	
Sen. Keating	X	
Sen. Mahlum	X	
Sen. McCarthy	X	
Sen. Miller	X	
Sen. Roush		
Sen. Taylor	X	
Sen. Wilson	X	
Totals	10	0

passed

Sen. Natural Resources
EXHIBIT 1
DATE 6/15/99
SB 1

Testimony of Madam Chairman Clara Nomee

In Support of Senate Bill 1 and

House Bill 2

Before the Senate and House Natural

Resources Committees, the Senate

Finance and Claims Committee

and the House Appropriations

Committee

Special Session of the Montana

Legislature

June 15 and 16, 1999

My name is Clara Nomee. I am the Madam Chairman of the Crow Tribe. As the duly elected Chairman of the Crow Tribe, I am here to convey the strong, in fact, the unanimous support of the Crow Tribal Council for the enactment of the bills to settle the water rights and coal severance tax issues between the Crow Tribe and the State of Montana. The passage of these two bills would also make possible and set the stage for the settlement of the almost 80 year old dispute involving Section 2 of the 1920 Crow Allotment Act with the United States.

For those of you who may not be familiar with the Crow tribal government, I want to briefly explain its structure. The Crow Tribal Council is the official voice of the Crow Tribe under our Constitution which was approved in 1949, fifty years ago. The Crow Constitution states that the Tribal Council is the medium, the body, the tribal organization through which the Crow Tribe speaks to the governments and the general public. The Tribal Council consists of all adult enrolled members of the Crow Tribe. It holds regular meetings four times a year, in January, April, July and October. The Tribal Council sets the rules and policies of the Crow Tribe through the adoption of resolutions by majority vote.

The Tribe holds elections every two years for four elected officials, Chairman, Vice-Chairman, Secretary and Vice-Secretary. The four officials conduct the Tribal Council meetings,

administer the tribal government, present resolutions to the Tribal Council and carry out the Tribal Council's resolutions.

At the last Tribal Council meeting on April 10, before anyone knew that Governor Racicot would call a special session of the Montana legislature, the Tribal Council unanimously adopted Resolution No. 99-33. Resolution No. 99-33 states:

> The Crow Tribal Council calls on the Montana legislature to enact legislation before the close of its 1999 session approving the proposed settlement of the water rights and coal severance tax issues supported by the Crow Tribal Administration, the Crow Negotiating Team and the Governor and Attorney General of the State of Montana; provided that it is clearly understood by all parties that no part of the settlement will take effect or be binding on the Crow Tribe unless and until the complete package settlement of all three issues is first approved by Congress and the Secretary of the Interior and is then approved by vote of Crow tribal members through a secret ballot process in accordance with the terms of this resolution.

That is the position of the Crow Tribe speaking through its only official voice, the Crow Tribal Council. That is the message I bring to you as the elected Chairman of the sovereign Crow Nation. It is also the position supported by all four tribal elected officials. Mr. Chairman, I would ask that Resolution No. 99-33 be made a part of the record of this Committee.

On behalf of the Crow Tribe, I want to express our appreciation to Governor Racicot and Attorney General Mazurek. We approached them last fall with something that had never been done before -- a proposal that would attempt to resolve at one time the three most difficult and important issues affecting the Crow Tribe and the Crow Reservation - water rights, coal severance tax and section 2. We knew that we had a very short time. Negotiating solutions to anyone of these issues usually take years, not months. We knew that the Governor and the Attorney General are from different parties. We knew that they would have to work together for the good of all the people of Montana. We knew and they knew that the odds were against us -- that it would take a minor miracle to reach the point we're at today and a full-fledged miracle for everything to happen by the end of 2000 when their terms are up. I believe in miracles. I thank the Governor and the Attorney General from the bottom of my heart for recognizing the unique and historic opportunity to resolve these critically important issues, for accepting the

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challenge of leadership, for having the courage to risk failing and for working together and putting aside their political differences. I especially want to thank Governor Racicot for calling this special session of the legislature to consider the proposed Crow/Montana settlement.

I also want to express the same appreciation to my fellow Crow politicians, Cedric Black Eagle and Barney Cummins, and to their Crow advisors, Urban Bear Don't Walk and Bob Kelly. Cedric and Barney ran against me for Tribal Chairman in 1998. They were the second and third highest vote-getters. Urban and Bob supported and campaigned for them. When I invited Cedric and Barney to join our negotiating team, and they asked me to include Urban and Bob, all four agreed. They also recognized the unique and historic opportunity to reach a settlement that would improve the lives of the Crow people for generations to come. They put aside their political differences with me and with my administration. They worked very hard. We shared all the information we had with them and they read and digested it all. They understood the issues and the stakes. We asked for their opinions and advice and we relied on what they said. They attended countless meetings as unpaid volunteers. They were criticized by some of their supporters and allies, accused of being sellouts. But they stuck to their guns and also accepted the challenge of being political leaders. I'm very proud to be standing here today with them and for them to be standing here

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with me.

I hope that the members of the Montana legislature will do what Governor Racicot and Attorney General Mazurek did and what Cedric, Barney, Urban, Bob and I did -- put aside political differences and party affiliations and work together. Stand up for what is right. Help us make this miracle happen.

I also ask you to respect the sovereignty of the Crow Tribe, the voice of the Crow Tribal Council, the views of the elected officials and ultimately the result of the secret ballot vote of our tribal members. I have been elected Tribal Chairman in 5 successive elections. I've been blessed. I was the first and so far the only woman elected Chairman. I know my people and they know me. I can tell you that the vast majority of Crows support what we are doing and that they will vote to accept a fair and just settlement if the Montana legislature enacts these bills and our negotiations with the United States are successful. I know my people.

Please don't second guess us. Please don't reject these bills because you think you know what is best for us. We've had enough of that for 150 years. Also, please don't tell us how much the Tribe can win in the courts. We've been down that path and we know where it leads. Please let us decide what is best for us through our tribal political process and our secret ballot

vote.

Finally, I hope you will look at the big picture and not get bogged down in all the details. Here is what the big picture will look like from the standpoint of the Crow people if the bills pending before the Montana legislature are enacted and our subsequent negotiations with the federal government are successful:

- we will have the opportunity to buy back our reservation land and water from willing sellers at a fair price and to secure our land base as our permanent tribal homeland;
- we will have the opportunity to protect our abundant and high quality coal from double taxes so that it can be developed to provide good high-paying jobs for tribal members and the Tribe will be able to keep all the tax revenues produced by our coal;
- we will have the opportunity to secure enough surface and groundwater to meet all of the Tribe's present and future needs;
- we will have the opportunity to be able to exercise our sovereign authority over the use of our surface and groundwater;
- we will have the opportunity to share the economic benefits from the blue-ribbon wild trout fishery in the

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Bighorn River and to participate equally with the state and federal governments in the management of that resource;

- we will have the opportunity to obtain millions of dollars a year in revenues from the power produced at Yellowtail and downstream federal dams, just as the Salish and Kootenai Tribes on the Flathead Reservation have received the power revenues from Kerr Dam for more than 50 years;
- we will have the opportunity to avoid the time, expense and risks of litigation;
- finally, we will have the opportunity to heal old wounds and to establish new relationships with the federal government, the State of Montana and our non-Indian neighbors based on equality, trust and mutual respect.

I firmly believe that the settlement of the Crow water, coal severance tax and Section 2 issues would be the most significant event in the history of the Crow Tribe since the signing of the Second Treaty of Fort Laramie in 1868. It would enable the Tribe to become economically self-sufficient by utilizing our own natural resources. With the settlement, the Tribe will be able to provide essential services to our people, to greatly improve our quality of life and our standard of living and to preserve our tribal homeland and the culture of the Crow people. I pray

that you - the members of the last Montana legislature of this millennium - will not let this historic opportunity slip away from us.

Thank you very much.

Sen. Natural Resour
EXHIBIT 2
DATE 6/15/99
SB 1

SB1
WATER COMPACT ENTERED INTO BY
THE STATE OF MONTANA,
THE CROW TRIBE,
AND THE UNITED STATES OF AMERICA

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CROW-MONTANA
WATER RIGHT-COAL SEVERANCE
TAX SETTLEMENT
(LC 1 AND LC 2)
to be considered in a
Special Session of the
Montana Legislature
June 15, 16, 1999

BACKGROUND of the SETTLEMENT

In the fall of 1998, officials from the Crow Tribe approached Governor Racicot and Attorney General Mazurek with a proposal for a comprehensive settlement of three important issues that have gone unresolved for decades: tribal water rights, coal severance tax litigation and "Section 2" land ownership. The Tribe hoped that a settlement package involving the first two issues could be brought to the 1999 Legislature for approval.

Since December, the Montana Reserved Water Rights Compact Commission and the Crow Tribe, working closely with the negotiating team for the United States, have engaged in intensive negotiations on the water rights issues. In April, the Tribe and the Compact Commission finalized a compact which provides for a significant water right for the Tribe while protecting the rights of all existing water users. At the same time, the Governor and Attorney General negotiated a final settlement of the contentious coal tax litigation. These two agreements will now be brought to a special session of the Montana Legislature for ratification, the first step in an approval process that will include Congressional authorization, a Crow tribal secret ballot referendum and ultimately approval by the Montana Water Court. The "Section 2" issue will be negotiated by the Tribe and United States and included in the Congressional settlement package.

CROW WATER RIGHTS COMPACT (LC 1)

In general, the compact:

- provides water from surface flow, groundwater and storage for the Crow Tribe for existing and future tribal water needs. (Article III)
- provides protection for all state and tribal current water users in the affected water basins from the Tribe's future exercise of its water rights; also protects the local conservation districts' right to future water use. (Article III)
- "closes" certain basins and sub-basins to new water appropriations under State law; small domestic and stock uses, as well as changes and transfers of water rights, can continue. (Article III)
- creates an administrative process for resolution of any future disputes between Tribal and non-Tribal water users. (Article IV)
- authorizes the State to pay the Tribe $15 million in consideration for the Tribe's dismissal of the coal severance lawsuit and for the State's "cost-share" for the water rights settlement. (Article VI)

IMPLEMENTATION OF THE CROW COAL SEVERANCE TAX SETTLEMENT AND WATER RIGHTS COMPACT (LC 2) AND STATE CONTRIBUTIONS TO SETTLEMENT

LC 1, the Crow Water Rights Compact, authorizes the State of Montana to pay the Crow Tribe $15 million in annual installments over a period of 10 years to a fund "dedicated to economic development and water and sewer infrastructure within the Reservation." The Compact makes it clear that the State is contributing this money to (1). settle the long-standing coal severance tax dispute and (2). provide the State's "cost-share" for settling the water rights of the Tribe.

LC 2 implements these two settlements. It authorizes the first two payments of $1.5 million in FY 2000 and $1.5 million in FY 2001 from the general fund. It provides that the funds will be paid into an escrow account. The funds, together with any interest earned, will be transferred to the Tribe when the following conditions occur:

1. the Compact has been approved by the Congress of the United States in a form satisfactory to the Compact Commission;
2. the Compact has been approved by the Crow Tribe;
3. the Compact has been approved by the Water Court; and
4. the Tribe and the U.S. file the necessary paperwork to dismiss the coal severance tax case.

LC2 also authorizes the Governor and Attorney General to agree that any future State production taxes on the Tribe's coal will be paid to the Tribe.

CROW TRIBAL WATER RIGHT

BIGHORN RIVER

- 500,000 AFY of natural flow of the river including groundwater for existing and future Tribal uses.
- The United States will allocate 300,000 AFY of storage in Bighorn Lake to the Tribe.
- All of the rights for future Tribal development can be developed only if there is no adverse effect on current tribal and non-tribal water uses.
- The State will not issue any new appropriations on this river, down to the confluence of the Yellowstone River, once the legislature ratifies this compact, however, new small domestic and stock uses as well as changes and transfers can continue. Local conservation districts can also develop their water reservations.
- A management plan will be developed by the Tribe, State and United States for instream flows and lake levels.

LITTLE BIGHORN RIVER and PRYOR CREEK

- The Tribe may use all available surface and groundwater on the Reservation not needed to satisfy current water uses.
- In both basins the State will not issue any new appropriations once the legislature ratifies this Compact, however, new small domestic and stock uses as well as changes and transfers can continue.

ROSEBUD CREEK

- The Tribe may use all available surface and groundwater on the Reservation not needed to satisfy all current downstream uses provided for in the Northern Cheyenne Compact and certain portions of the Northern Cheyenne Tribal Water Right are protected.
- The basin will be closed to new appropriations under state law on the Reservation.

BITTER CREEK, BLUE CREEK, BLUEWATER CREEK, COTTONWOOD CREEK, DRY CREEKS (TONGUE RIVER BASIN AND YELLOWSTONE BASIN), FIVE MILE CREEK, FLY CREEK, SAGE CREEK, SARPY CREEK, SQUIRREL CREEK, TANNER CREEK and YOUNG'S CREEK

- The Tribe may use all available surface and groundwater on the Reservation not needed to satisfy current water users.
- The portion of these drainages on the Crow Reservation will be closed to new appropriations under State law, however, new small domestic and stock uses as well as changes and transfers can continue.

CEDED STRIP

- The Crow Tribe will have the right to use 47,000 AFY from any water source on lands or interests on the ceded strip which Congress restored to the Tribe or on any lands acquired and held in trust for the Tribe. If the water source is the Bighorn River, the amount developed shall be deducted from the on-Reservation water allocated to the Tribe from the river. No more than 7,000 AFY can be diverted in any one month.

ADMINISTRATION/DISPUTE RESOLUTION

- The Tribe will administer the Tribal water right. The State will administer water rights recognized under state law. The BIA Project will use part of the Tribal water right and will continue to be administered by the BIA under applicable federal law.

- All tribal development, either on the Reservation or on the Ceded Strip, will be reviewed by the Tribe and the Montana Department of Natural Resources and Conservation to determine if it will impact any current water users. Any unresolved disputes will be referred to the Crow-Montana Compact Board.

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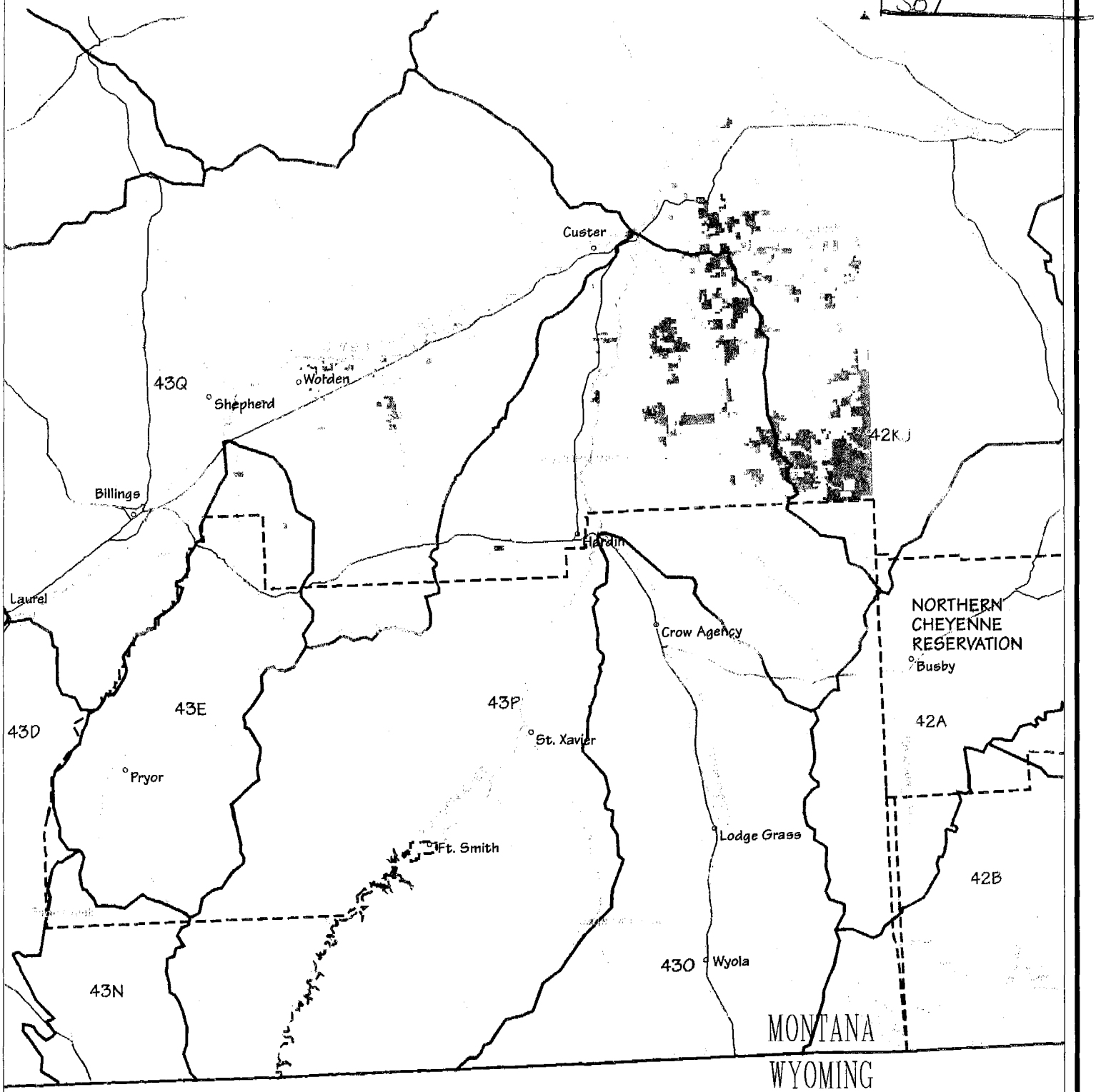
CROW RESERVATION AND CEDED STRIP

EXHIBIT 5
DATE 6/15/99
SB1



- CROW RESERVATION
- CEDED STRIP
- SURFACE PARCELS OWNED BY CROW TRIBE
- MINERAL PARCELS OWNED BY CROW TRIBE

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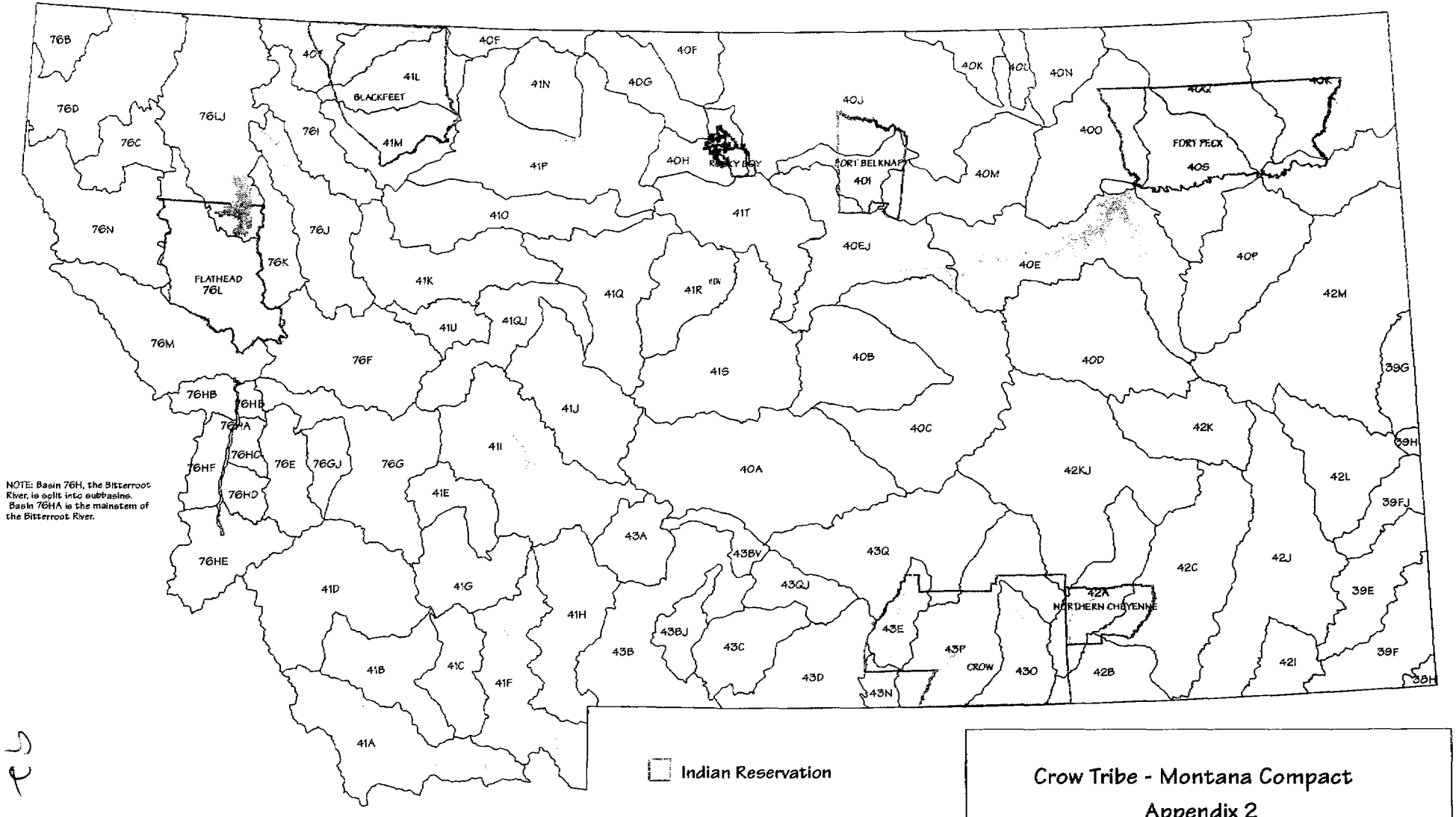
Sen Natural Resources
EXHIBIT 4
DATE 6/15/99
SB 1

Water Court Basins
in Montana

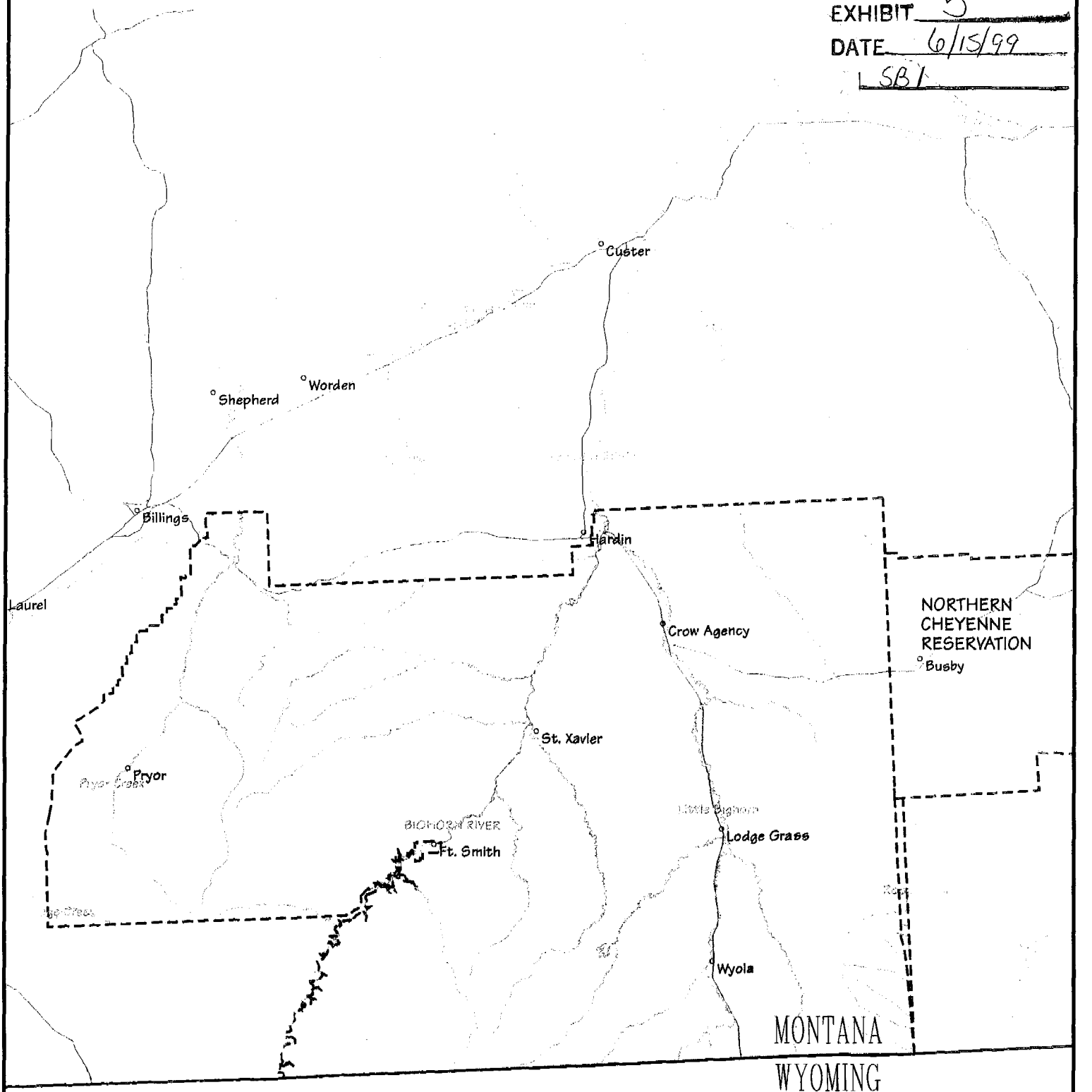


NOTE: Basin 76H, the Bitterroot River, is split into subbasins. Basin 76HA is the mainstem of the Bitterroot River.

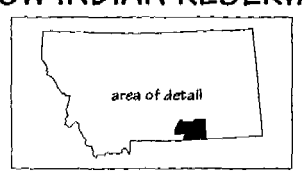
Crow Tribe - Montana Compact
Appendix 2

CROW INDIAN RESERVATION

Sen. Natural Resources
EXHIBIT 5
DATE 6/15/99
SB 1



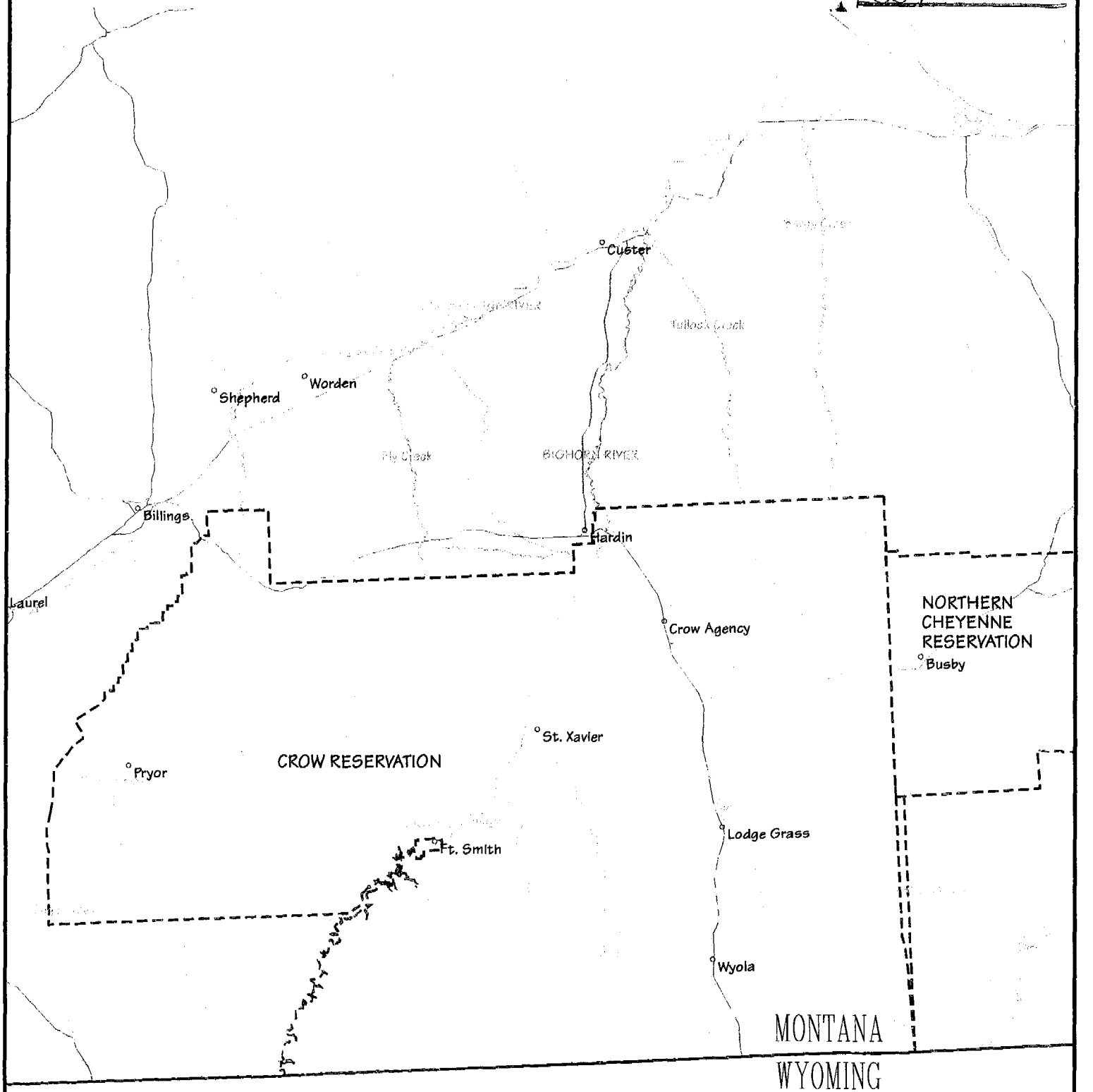
CROW INDIAN RESERVATION



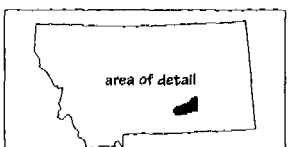
Crow Tribe - Montana Compact
Appendix 4

CEDED STRIP

Sen. Natural Res.
EXHIBIT 6
DATE 6/15/99
SB 1



CEDED STRIP



Crow Tribe - Montana Compact
Appendix 5

Sen. Natural Res.
EXHIBIT 7
DATE 6/15/99
SB 1

State Engineer's Office

Herschler Building, 4-E Cheyenne, Wyoming 82002
(307) 777-7354 FAX (307) 777-5451
seoleg@missc.state.wy.us

JIM GERINGER
GOVERNOR

GORDON W. FASSETT
STATE ENGINEER

Testimony provided to the Montana Legislature's Senate and House Natural Resources Committees June 15 & 16, 1999 by State of Wyoming Wyoming State Engineer's Office Gordon W. Fassett, State Engineer Cheyenne, WY

The State of Wyoming appreciates this opportunity to provide comments to the Montana Legislature as you consider and act on the Crow Water Rights Settlement Compact. Wyoming, through the Wyoming State Engineer's Office, also appreciated the invitation to many of the public negotiating sessions and for the opportunity to provide input and participate to some degree with the State of Montana, the Federal negotiating team, and the Crow Tribe representatives. While considerable effort was made by the staff at the Montana Reserved Water Rights Compact Commission to involve Wyoming and keep us up to date, the fast pace of the negotiations made it difficult to keep abreast of the many concept and language changes that had been agreed upon by the parties. While some of Wyoming's concerns were addressed by the participants, it was always apparent that Wyoming was not a formal negotiating partner and that the decision making process was driven by the formal parties and the fast track deadlines. Some important matters were left open or addressed with seemingly vague language which will require clarification or may be the source of future court interpretations.

Wyoming at this time neither supports or opposes your ratification of the compact. We see this Compact as a negotiated resolution to a complex set of topics, including the Crow Tribe's water rights. Negotiated settlements such as this are not identical to a legal court determination or adjudication of these complicated and sophisticated legal and technical matters. Nor do they set a

Surface Water (307) 777-6475 Ground Water (307) 777-6163 Board of Control (307) 777-6178

precedent in establishing legal entitlements beyond what may be allowed by law. As a negotiated accommodation between Montana, the Tribe and the Federal government, Wyoming, simply stated, believes this Compact should not have any adverse impact upon the water allocations and rights appropriated in Wyoming under State and Federal law, including the Yellowstone River Compact, nor should it provide the legal right to any party to impinge upon the water resources held as the constitutional property of the State of Wyoming. Wyoming and Montana have worked together as good neighbors for nearly 50 years under the Yellowstone River Compact and we do not want controversies arising from this new arrangement to disrupt this relationship. While we truly commend Montana's desires to seek a settlement of these often difficult and contentious issues based on our own litigation history, we also desire to support your settlement, if that resolution does not affect Wyoming's interests.

We were pleased with several provisions of this Compact. First, Wyoming's position with regard to the Bighorn River was that the volume of the allocations made to the Crow Tribe should be equal to or less than Montana's share of the Bighorn River under the Yellowstone River Compact. Based on information from the Federal negotiating team our analysis shows that, in average water years, the allocations made to the Tribe from the Bighorn River should be met with Montana's compact share. However, the ramifications of this compact in the Little Bighorn River and its tributaries are not as clear cut. We do recognize the accommodation in the Compact of leaving open the question of further appropriations of the Little Bighorn in Wyoming and will pursue this issue, among others, as this compact moves to Congress for ratification.

One difficulty in analyzing the potential long term implications of this settlement was the separation of the items over which Montana has jurisdiction from the "federal" issues. Topics such as the Section 2 matters and the transfer of hydropower revenues generated from Yellowtail Dam operations to the Crow Tribe may be of significant interest to Wyoming. However, since these federal issues were severed from the issues negotiated in this Compact, a total package impact was impossible to evaluate. The fast-tracked process of approval by the

Montana Reserved Water Rights Compact Commission, coupled with the fact that no changes to the exact wording could be made after the Commission's approval, led to final determinations being made by the parties, in what Wyoming felt was still early in the negotiating process. Many language, paragraph and definition changes were made, often without an explanation as to the reason for such additions or deletions. For example, written responses from Montana to questions raised by Wyoming often more clearly described the understanding of the parties than does the plain reading of the language in the Compact.

It appears that this next year, after your ratification, will include many important follow-up activities, such as the development of the river/reservoir management plan. We understand from the Commission staff that Wyoming will be specifically mentioned as a party to involve as the public participation process moves forward for this plan. We appreciate being included at this stage as a portion of Bighorn Reservoir lies in Wyoming and provides significant recreation benefits to that part of our state. Other details of the Compact provisions and operation of the stream system with the newly established water rights will hopefully be fully addressed since time was so short during the negotiations.

Wyoming will be working closely with its Congressional delegation to assure that her rights and entitlements to the water resources of the basin are not impacted, as this ratification process moves forward to Congress.

We appreciate your allowing Wyoming to provide our comments for the record as you deliberate the ratification of this settlement compact. If you have questions, or would like more information about Wyoming's position, I can be reached at 307-777-6150, Wyoming State Engineer's Office, Herschler Bldg, 4E, Cheyenne, WY 82002.

EA 8

Sen. Natural Res.
EXHIBIT 8
DATE 6/15/99

PREPARED BY	
DATE	

SB

PAGE NO.

6-15-99 DAVID TURK Acting Jr

It is an honor to stand here today before you, knowing that I could lose my job in speaking for this water compact. But know this please, I could and will find another job, but not another water compact that gives me and my children a water right!

There is much that can be said of yesterday and years past, however as a member of the Crow Tribe and a land owner by heirship in concerns of future plans with a water right, much more can be said and accomplished.

Today will be remembered, in passing and finalizing that thought of a water compact just a few months ago, to be impossible in having it on black and white, yet here it is; an agreement reached by the efforts of all who took apart in these negotiation teams.

One day Crow Tribal members can say as being a Montanan "It is great to live here in land of beauty, of riches; with a good heart to be giving thanks to God for giving the wisdom to men speaking straightforward and truth."

Sen. Natural Res.
EXHIBIT 9
DATE 6/15/99
SB 1

Senate Bill 1
June 15, 1999
Presented by Patrick Graham
Montana Fish, Wildlife & Parks
for the
Senate Natural Resources Committee

My name is Patrick Graham, director of Montana Fish, Wildlife & Parks. Our principal interest in the compact is Article III, Section A.7., which directs the Tribe, Secretary of Interior and State to develop a streamflow and lake level management plan for the Bighorn River. We support the need for this provision.

Under this section, the plan shall be agreed to within one year of the compact ratification by this body. The state reserves the right to withdraw from the compact if the streamflow and lake level management plan is not agreed to by the parties within one year. There is also a provision to extend the period for negotiation of the streamflow and lake level management plan by agreement of the parties.

The Bighorn River is a world class, wild trout fishery. Angler use on the Bighorn in 1997 exceeded 100,000 angler days. This is slightly less than the Madison, comparable to the Yellowstone and greater than use on the Gallatin, Bitterroot and Big Hole. Based upon the 1987 value of a fishing day on the Bighorn of $93, and accounting for inflation, the actual economic value of the fishery in 1997 dollars could be $16-18 million per year to the economy of Montana. This is clearly a very significant fishery resource.

The value of this fishery resource is highly dependent upon the flow regime provided in the 13-mile stretch between the dam and the Two Leggins diversion. FWP recognized this and applied for a reservation of water for instream flows as part of our Yellowstone River reservation application. The Board of Natural Resources and Conservation granted FWP an instream flow at the mouth of the Bighorn of almost 2.5 million acre-feet per year. However the instream flow reservation was conditioned such that it is "subject to all existing senior water rights ... including but not limited to any decreed rights, or federal or Indian reserved rights." The compact will protect established state consumptive rights and will quantify Crow Tribal reserved rights, and both are senior to our instream flow reservation.

Therefore, it is vital that the Crow Tribal rights, which could be developed under the compact, and the releases from Yellowtail Reservoir, are both balanced with protection of the existing fishery.

FWP has worked closely with the Bureau of Reclamation over the past several years to develop annual operating plans for Yellowtail Reservoir and the Bighorn River that have maintained the fisheries and recreational values of these water bodies. We envision the streamflow and lake level management plan provided for in the compact to provide a framework for the same type of cooperative effort.

We have just signed a Memorandum of Understanding (MOU) with the Crow Tribe that provides the basis for the negotiation of the streamflow and lake level management plan. The MOU states that:

> The objective of the parties under Section A.7., Article III of the Compact is to develop an enforceable streamflow and lake level management plan that strikes an appropriate and agreed balance between the Tribe's discretion in the development and exercise of the stored and natural flow Bighorn River water rights recognized in the compact with the parties' shared objectives: (1) to provide adequate and reliable instream flows to protect the blue ribbon, wild trout fishery in the Bighorn River, and; (2) to maintain lake levels that take into account the habitat and recreational values of Bighorn Lake.

The MOU also states that: "[t]he parties agree to consider a phased approach based on mutual sharing and compromise among uses particularly when water availability is limited."

FWP is encouraged by the development of this MOU and is hopeful that the negotiations will move forward productively. Having said that, I must also caution the legislature that the MOU does not ensure that we'll be able to negotiate a streamflow and lake level management plan that is adequate, in our view, to protect this valuable wild trout fishery. In the compact, the state reserves the right to withdraw from the compact if an acceptable plan cannot be negotiated within a year. The success of the negotiations will depend on the Crow Tribe, the State of Montana and the involved federal agencies, represented by the Department of Interior, all being willing and able to agree to plans for the future development of water balanced with protection of the fishery. The release patterns by the Bureau of Reclamation will be particularly critical to the success of the negotiations.

We are committed to giving this our best effort.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CROW TRIBE OF INDIANS, THE STATE OF MONTANA BY AND THROUGH THE GOVERNOR OF MONTANA AND THE UNITED STATES OF AMERICA BY AND THROUGH THE SECRETARY OF THE INTERIOR

This agreement is made pursuant to the provisions of the State-Tribal Cooperative Agreement Act, sections 18-11-101 et seq., MCA, and subject to the legislative enactments of the June 1999 Special Session of the Montana Legislature, Crow Tribal Resolution No. 99-33, and 28 U.S.C. §§ 516-517; 43 U.S.C. § 1457; 25 U.S.C.§ 2 ; and 55 Fed. Reg. 48, 9223-9224 (1990). The State of Montana (State), acting through the Governor of the State of Montana (State), the United States of America (United States), acting through the Secretary of the Interior (Secretary) and the Crow Tribe of Indians (Tribe) are parties to this agreement.

PURPOSE OF AGREEMENT

A. The State and Tribe have agreed to seek ratification and approval of the Crow-Montana Compact (Compact) that they have negotiated.

B. The compact provides that the parties shall develop a streamflow and lake level management plan for the Bighorn River from the Yellowtail Dam Afterbay to a point immediately upstream of the Two Leggins diversion, and for Bighorn Lake.

C. The parties further agree to establish certain parameters, rules and procedures governing the negotiations between the parties.

NOW, THEREFORE, the United States acting through the Secretary, the State acting through the Governor and the Tribe acting through the Tribal Chair hereby

agree to the following in order to facilitate negotiations:

1. The objective of the parties under section A.7, Article III of the Compact is to develop an enforceable stream flow and lake level management plan that strikes an appropriate and agreed balance between the Tribe's discretion in the development and exercise of the stored and natural flow Bighorn River water rights recognized in the compact with the parties' shared objectives: (1) to provide adequate and reliable instream flows to protect the blue ribbon, wild trout fishery in the Bighorn River, and; (2) to maintain lake levels that take into account the habitat and recreational values of the Bighorn Lake.

The parties recognize that to accomplish these objectives the flow regime of the management plan must be flexible and adapt to changes in the physical availability of water, the constraints on reservoir operation, the development of consumptive uses of water by the Tribe, and other relevant factors. The parties agree to consider a phased approach based on mutual sharing and compromise among uses particularly when water availability is limited.

2. The parties shall agree to a time line for technical work, environmental compliance, and negotiations leading to a streamflow and lake level management plan.

3. The parties recognize that implementation of a management plan is dependent upon any necessary Congressional action.

4. To the extent possible, it is the goal of the parties to hold the negotiations in Billings. The meetings will be chaired on a rotating basis by United States, State and

Tribal representatives.

5. Negotiations will be open to the general public and the meetings will be recorded. Negotiations will be closed and held in an executive session whenever the parties agree that there is a need to protect confidential or privileged information and to the extent that such closure is consistent with Federal, State and Tribal law.

6. No statements made or positions taken in the negotiations shall be admissible in any trial or other proceeding regardless of whether that statement or position constitutes an offer to compromise under Rule 408 of the Montana Rules of Evidence or Rule 408 of the Federal Rules of Evidence. However, the parties shall not be prohibited by this paragraph from utilizing and presenting as evidence at trial any factual data or technical material created, compiled, or utilized by the party generating such material solely on the ground that the data or material was discussed in the negotiations. This paragraph shall not enlarge or diminish the rights of any party to seek discovery under the State or Federal Rules of Civil Procedure.

7. The parties agree that all press releases and other statements to or discussions with the press regarding negotiations shall be made jointly by the United States, the State and the Tribe. Any press contact outside of these conditions will be reported to the other parties promptly after it occurs.

8. When appropriate, the United States, the State and the Tribe will appoint subcommittees to analyze technical or other designated issues and make recommendations to the United States, the State and the Tribe.

9. The parties to these negotiations shall be limited to the United States, the Tribe and the State. The parties acknowledge that the participation the state of Wyoming and the Northern Cheyenne Tribe may be necessary to resolve some issues and agree to solicit their participation as necessary.

10. The United States, the State and the Tribe acknowledge that attendance of the public, at negotiating meetings is appropriate for a full resolution of the streamflow and lake level management plan issues. Comments from the non-party attendees at negotiation meetings will be received during designated public comment periods to be included in the agenda of each meeting which is open to the public, and at such other times as the chair may direct with the concurrence of the parties. For public meetings or presentations done jointly by the parties, the agenda and the appropriate structure will be agreed to in advance by all parties.

This Memorandum of Understanding shall take effect between and among any of the parties as of the date the Memorandum of Understanding is signed by those parties. This Memorandum may be amended in writing by joint agreement of the parties at any time.

STATE OF MONTANA

Governor

Date: 6-14-99

CROW TRIBE OF INDIANS

Chair

Date: 6-14-99

UNITED STATES OF AMERICA

_____

Secretary of the Interior

Date: _____

EXHIBIT 10

MONTANA FARM BUREAU FEDERATION
502 South 19th • Bozeman, Montana 59718
Phone: (406) 587-3153
Fax: (406) 587-0319

Sen. Natural Res.
EXHIBIT 10
DATE 6/15/99
SB 1

June 15, 1999

Members of the committee, Thank you for allowing me the opportunity to appear before you on this very important issue. I am Lorna Frank-Karn representing the Montana Farm Bureau Federation and its 32 county Farm Bureau organizations throughout the state. The state organization is headquartered in Bozeman. I have been associated with Montana's largest agricultural organization for the past 30 years and currently hold the position of Information Director and Lobbyist.

The Farm Bureau wishes to go on record as being in support of the Crow Water Compact because we are dedicated to the protection of existing water rights. Many of our members who reside in Big Horn county feel that the current agreement protects all existing water uses. It sets up a process in which to resolve future disputes between Tribal and non-Tribal water users. It also provides for the development of new small domestic and stock water uses and settles other issues between the State and the Tribes.

Therefore, we urge members of this committee to support the Compact and to work together for its passage in the U.S. Congress.

Lorna Karn

Lorna Karn

Jack Stults

Sen. Natural Res.
EXHIBIT 11
DATE 6/15/99
SB 1

MONTANA 56TH LEGISLATIVE ASSEMBLY
SPECIAL SESSION

TESTIMONY
OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERATION
WATER RESOURCES DIVISION
June 15 & 16, 1999

SENATE BILL 1

AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE CROW TRIBE AND THE STATE OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE

Mr. Chairman, members of the committee, I am Jack Stults, Administrator of the Water Resources Division at the Department of Natural Resources and Conservation. I am also Montana's Commissioner on the Yellowstone River Compact Commission, which administers the 1951 compact between Montana and Wyoming.

The Department of Natural Resources and Conservation strongly supports this negotiated settlement between the Crow Tribe and the State of Montana. There are many reasons the agency supports this compact. You will hear most, if not all, of them from the many compact proponents. There are four points in particular we want to stress.

This compact contains very clear guidance on administration of its provisions. The administration is consistent with existing state law and will fit smoothly within existing processes. The concepts and procedures will likely be familiar to any water user in Montana. In addition, the DNRC has a good working relationship with the Crow Tribal Water Resources Department, so we are positions to implement the administrative processes cooperatively and without delay.

This compact is not inconsistent or in conflict with the 1951 Yellowstone River Compact between Montana and Wyoming. The amounts allocated to future development by the Crow Tribe are within the available Montana entitlement in the interstate compact. The Crow-Montana Compact explicitly states that it shall not be construed to alter or amend any provision or to adopt or preclude any interpretation of the Yellowstone River Compact. This disclaimer is very important to the Yellowstone River Compact Commission; especially to Wyoming, which has participated in the discussions leading to the Crow Compact. Furthermore, having a compact between Montana and the Crow Tribe adds substance to what has been a large void in understanding the basin and administering the interstate compact. Wyoming, through State Engineer Gordon W. Fassett, has submitted testimony on the Crow Compact. At this time Wyoming neither supports nor opposes ratification of the Crow Compact.

Ratification will open several important drainage basins to adjudication of the state-based water rights by the Montana Water Court under the statewide adjudication. It has been the policy of the Compact Commission and the Water Court to refrain from adjudication efforts in drainages on tribal reservations so as not to interfere with or compound the work of negotiating a settlement of the tribal reserved water rights. The Big Horn and Little Big Horn Rivers, in particular are important drainage basins for adjudication of the state-based water rights.

Most importantly, the compact you have before you is a very good settlement for Montana. I also think it is good for the Crow Tribe, but that is not for me to give testimony on. This settlement protects all existing non-tribal water rights. It even protects the reserved rights held by the area's conservation districts for future irrigation projects. I have had the opportunity to discuss the proposed compact with my counterparts from most of the seventeen states in the West. They are uniformly amazed at the amount of protection and the positive nature of this settlement. I think there is one main reason for this. It has to do with the approach taken in these negotiations by the Tribe and the Compact Commission. These negotiations and this compact are not looking backward at entitlements. They look forward to the future and our potential as neighbors.

The Department of Natural Resources and Conservation urges you to ratify The Reserved Water Rights Compact between the Crow Tribe and the State of Montana.

12

Sen. Natural Res
EXHIBIT 12
DATE 6/15/99
SB 1

SPECIAL SESSION OF MONTANA LEGISLATURE
CROW TRIBE-MONTANA
WATER RIGHTS COMPACT

June 15, 1999

I am a rancher and landowner in Big Horn County on the Crow Reservation. I presently hold various water filings consisting of domestic, irrigation, and stock water uses. The Little Big Horn River flows through my property for approximately 2 miles. I am presenting this letter in support of the Water Rights Compact Agreement. I believe the agreement, with some exceptions, is reasonably fair to all parties involved.

At the first meeting I attended the proposal was presented as a three part package proposal – water rights, coal severance tax, and resolution of Section 2 of the 1920 Crow Allotment Act. I urge the parties involved to continue with resolving Section 2 with equal fairness to both tribal and non-tribal landowners.

I was skeptical at the first meeting I attended that this proposal would reach this phase of accomplishment. I certainly commend the Montana Reserved Water Rights Compact Commission, the representatives of the Crow Tribe, and the other parties involved for the efforts and time they have devoted to this complicated and difficult proposal.

Charles F. Fuller

Charles F. Fuller
Fuller Ranch
P.O. Box 158
Wyola, Montana 59089

13

YELLOWSTONE IRRIGATION DISTRICT

ROSEBUD-TREASURE COUNTIES

Box 169
HYSHAM, MONTANA 59038

June 7, 1999

RECEIVED
JUN 08 1999
DEPT. OF NATURAL RESOURCES
AND CONSERVATION
BILLINGS OFFICE

Sen. Natural Res.
EXHIBIT 13
DATE 6/15/99
SB 1

Governor Marc Racicot
State Capitol
Helena, MT

Dear Governor Racicot,

The Board of the Yellowstone Irrigation District would like to lend it's support to the proposed water compact between the State of Montana and the Crow Tribe.

This proposal is a rare opportunity to secure the water rights for the future generations of Montana land owners and water users.

This proposal is also the best vehicle for clearing up other issues that have been a controversary in Eastern Montana.

The passage would allow us in Eastern Montana to move forward with some confidence for the future development of our water and land resources.

Thank you for your consideration and efforts.

Harlin Steiger
Harlin Steiger, Chairman

Bill Asay
Bill Asay, Member

Myles VanHemelryck
Myles VanHemelryck, Member

HUNTLEY PROJECT IRRIGATION DISTRICT
P.O. Box 61
Ballantine, MT 59006
(406) 967-3400

To Whom It May Concern:

We at the Huntley Project Irrigation District support the Water Rights Compact between the State of Montana and the Crow Tribe in hopes that Legislature would pass this and to pass off to Govener Marc Racicot for consideration.

Thank You.

Sincerely,
Huntley Project Irrigation District
Board of Directors

Elmer Kimball
Harold Grosskopf
Darell Bohl
Monte Ongaro
Dale E Bridger

June 11, 1999

Govenor Racicot
State Legislature

We the stockholders of the Victory Ditch Company agree with the Crow Tribal water pact.

Sincerely,
Delbert Walter
Victory Ditch Co.
Delbert Walter, Pres.
Box 49
Custer, Mt 59024

112

Bighorn-Tullock Water Users
Box 147
Bighorn, Montana 59010

June 14, 1999

Governor Marc Racicot
State Capitol
Helena, Montana

Dear Governor Racicot,

The Board of Directors of the Bighorn-Tullock Water Users supports the proposed water compact between the State of Montana and the Crow Tribe.

We feel that the passage of this proposal is very important to the security of water rights and the future development of land resources for our State and for generations to come.

Your efforts and consideration are very appreciated and we thank you.

Most sincerely,

Jake L. Strecker
Director

Edward G. Strecker
Director

John R. Strecker
Director

BIG HORN LOW LINE DITCH COMPANY
208 North Center
Hardin, MT 59034

June 10, 1998

To Whom It May Concern;

RE: Water Rights Compact entered into by the State of Montana, The Crow Tribe, and the United States of America

The Board of Directors of Big Horn Low Line Ditch Company have attended several meetings on the compact and have reviewed the proposal and believe that although not perfect this proposal should be supported and hope that you will do your best to see that it passes.

Thank you,

Darell Webber
President
Big Horn Low Line Ditch Co.

Vermilion Ranch
Box 30758
Billings, Montana 59107
Ph.: 406/259-4589 — Res.: 373-6138

To: Members of the Montana House and Senate
Montana State Legislature
State Capitol
Helena, MT 59601

Ladies and Gentlemen:

This special session of the Montana legislature is certainly one of the most important ever called. There will never be a time in the foreseeable future that this governing body of Big Sky Country will have more opportunity to cure some of the real problems within the Indian and non-Indian communities.

I rise in support of the water compact and the corrections entitled to. This is a great opportunity for both Indian and non-Indian tribe members living within the reservation. Land values for the Indian lands will go up. Indians who own land on the reservation who wish to sell them, will have greater values by far than they have today. Non-Indian ranchers who would want to sell will eliminate the clouds on the titles at the present time. It is a win-win deal.

There will be a great turnover in our State Legislature and in the Indian Bureau in another year and they probably won't be able to get this much needed legislation taken care of.

I'm sure that with wordage corrections to fit federal language, the Federal government and the Bureau of Indian Affairs will go along with this as well. It needs to happen. It must happen. Time is of essence and there are only two days in which to cure it.

Due to a prior commitment with the Livestock Marketing Association, I find it impossible to be with you in Helena. Otherwise, I would have been there on June 16-17 myself. Let's don't let this wonderful opportunity for Indian and non-Indian alike pass us by. It may never come our way again.

Yours sincerely

Patrick K. Goggins
Pryor Creek Ranch
Division of Vermilion Ranches

June 11, 1999

Mr. Pat Riley
Department of Natural Resources & Conservation
Water Resources Regional Office
Airport Industrial Park
1371 Rimtop Drive
Billings, MT 59105-1978

Dear Mr. Riley,

We are writing in support of the Water Rights Compact ,entered into by the State of Montana and the The Crow Tribe, and the United States of America.

We support the Compact as it has been submitted to the Montana Legislature.

Sincerely,

Allen Graham

Susan Graham

Allen and Susan Graham
Landowners/Residents
Crow Indian Reservation
Lodge Grass, MT 59050

Post-it® Fax Note 7672

To Pat Reilly
Company DNRC
Location Billings, Mt.
Fax # 247-4416
Telephone #
Comments The letter you requested

No. of Pages
Today's Date
Time
From Harold C. Yergen
Company Farmers Ditch Co.
Location Hardin Mt.
Dept. Charge
Fax # 665-1099
Telephone #
Original Disposition: ☐ Destroy ☐ Return ☐ Call for pickup

6-14-99

In the interest of the Water Compact:

The Farmers Ditch Co. located near Hardin, Montana in Big Horn County is in complete agreement of the ratification of the Crow Tribal – Montana Water Rights Compact.

Sincerely,

Director - Harold C. Yergen

TREASURE COUNTY CONSERVATION DISTRICT
211 ELLIOTT AVENUE · P.O. BOX 231 · HYSHAM, MONTANA 59038
PH (406) 342-5466 · FAX (406) 342-5436

June 15, 1999

Yellowstone CD Board of Supervisors
1371 Rimtop Drive
Billings, MT 59105

RE: CROW RESERVATION COMPACT

Dear Supervisors:

The Treasure County Conservation District would like to ask you to speak on our behalf at the special session of the Montana legislatures. Attached is a letter to the legislatures stating our support for the Crow Reservation Compact. Thank you.

Sincerely,

Judi Knapp

Judi Knapp
Chairperson

14

Sen. Natural Res.
EXHIBIT 14
DATE 6/15/99
SB 1

TESTIMONY OF THE
NORTHERN CHEYENNE TRIBE
ON PROPOSED CROW TRIBE-MONTANA WATER RIGHTS COMPACT

PRESENTED BY
JOE WALKSALONG, PRESIDENT
NORTHERN CHEYENNE TRIBE

As President of the Northern Cheyenne Tribe, I appear today on behalf of the Tribe to express our Concerns about the proposed Crow Tribe-Montana Compact. The issues we raise today have to do with the notice and consultation procedures and the substantive parts of the proposed Compact that we believe may affect the Northern Cheyenne Tribe.

BACKGROUND

The Northern Cheyenne Tribe was the second Tribe within the State of Montana to conclude a water rights compact with the Montana Reserved Water Rights Compact Commission. Our Compact was approved by this Legislature and became state law in 1991. It was ratified by Congress in 1992, and was subsequently entered as a decree by the Montana Water Court in 1995.

The Northern Cheyenne Compact quantifies the Tribe's water rights in Rosebud Creek as well as the Tongue River. It also provides the Tribe a 30,000 acre-feet allocation of water in Big Horn Reservoir, and a 20,000 acre-feet allocation in Tongue River Reservoir. The State's Tongue River Dam was repaired and enlarged with funds appropriated by Congress as part of the overall settlement with the Tribe. This project was completed only recently.

The western boundary of the Northern Cheyenne Reservation borders the Crow Reservation, and we share a common stream, the Rosebud Creek. We believe the proposed Crow Compact impacts the Northern Cheyenne right in two respects: it protects only a portion of the Tribe's Rosebud water right; and it may prejudice or diminish the Tribe's Big Horn allocation. Before describing these issues in detail, I want to express our strong objection to the failure of the parties to the Compact to notify and consult with Northern Cheyenne concerning provisions that directly address our rights.

NOTICE AND CONSULTATION PROCEDURES

Even though the proposed Compact directly addresses Northern Cheyenne rights, not one of the parties to the Compact directly notified or consulted with the Northern Cheyenne Tribe concerning the provisions of the Compact that may affect Northern Cheyenne. Moreover, the provisions relating to the Rosebud were not made available until extremely late in the process. As a result, the negotiation process insofar as it affects Northern Cheyenne has been unreasonably compressed, and notice and consultation has been absent.

While we received notice of public meetings, the Northern Cheyenne Tribe is not just another member of the public. In fact, because the Northern Cheyenne Tribe is the only affected entity with an existing compact and decreed water rights, it is the one entity whose rights clearly require the most protection. Ironically however, the Northern Cheyenne Tribe is the one entity whose rights have received the least protection in the compact negotiation process.

We believe that the obligations assumed by the State of Montana under the Northern Cheyenne Compact requires the State, at minimum, to take the simple step of notifying the Tribe and consulting with us when Northern Cheyenne rights are addressed in a subsequent compact with another Tribe. Certainly, the Federal Government's legal trust responsibility to the Tribe which obligates the United States to take steps to protect Northern Cheyenne property rights, requires notice and consultation with Northern Cheyenne. The Crow Tribe also has an obligation to take into account other federal reserved water rights.

As a practical matter, the compressed process and lack of notice has made it impossible for Northern Cheyenne to take the necessary steps to protect its rights. Given the short time frame in which the Compact was put together, particularly the Rosebud provisions, any meaningful review of the compact by the Northern Cheyenne Tribe has been precluded.

IMPACTS ON NORTHERN CHEYENNE

As I have previously stated, the proposed compact impacts Northern Cheyenne Rights in two major areas, the Tribe's water right in Rosebud Creek and its Big Horn allocation.

Rosebud Creek. In Rosebud Creek, the Northern Cheyenne Tribe has a two tier water right. We have a right to 1800 acre-feet with a priority date of October 1, 1881. We also have a right to additional water of up to 19,530 acre-feet with the same priority, provided that the exercise of the right does not impact certain water users above and below the Reservation. The proposed Crow Compact provides that the Crow Tribe will

protect the Northern Cheyenne Tribe's 1,800 acre-feet, but it does not protect the Tribe's additional water right of up to 19,530 acre-feet. Because the full extent of the Crow Tribe's right to Rosebud water is not actually defined in the Compact, we can only analyze the impact of the Rosebud provisions by estimating the potential use of Rosebud water by Crow.

Under the terms of the proposed compact, the Crow Tribe has agreed to protect pre-1973 existing water uses on the Crow Reservation and off the Crow Reservation on Rosebud Creek. Given the willingness of the parties to protect all such state water users, we simply do not understand why the parties have chosen to protect only a portion of the Northern Cheyenne Tribe's decreed rights in the Rosebud. The nature of an Indian reserved water right under the defining case of *Winters v. United States* includes a future component as well as a present component. Existing uses have no greater significance than future uses. Therefore, it is particularly disturbing that the parties to the proposed compact have apparently departed from the generally accepted definition of a reserved right in dealing with Northern Cheyenne rights on the Rosebud. In effect, Northern Cheyenne has been treated differently than everyone else because the Tribe's decreed water rights are provided less protection than junior state water rights.

Big Horn Allocation. The proposed Crow compact may also affect the Northern Cheyenne allocation in the Big Horn Reservoir, but the extent of any impacts are not clear because there are many aspects of the Big Horn issues that are not addressed in the compact. For example, the issue of the State of Wyoming's rights under the

Yellowstone Compact are specifically deferred. In addition, the Crow Tribe must still enter a Lake Level Management Plan with the State and the Secretary of the Interior. Given these unknowns, we simply cannot tell the extent to which Northern Cheyenne's allocation may be affected by the proposed compact.

We are concerned that if the Crow Tribe utilizes its entire 500,000 acre-feet natural flow right in the Big Horn as provided in the proposed compact, and the State of Wyoming utilizes its entire allocation under the Yellowstone Compact, there may be insufficient water for storage during certain years, and the Northern Cheyenne allocation may be prejudiced or diminished under such a scenario. The compact also does not address how any available storage will be apportioned among the storage right holders, and with any obligations to maintain lake level and instream flows in times of shortage. There is also no clearly defined protection for the Northern Cheyenne allocation in the operation criteria for the Reservoir or in the lake level management plan, and no procedure which allows the Tribe to participate in the processes that will define these matters.

OTHER CONCERNS

In addition to our concerns about the substantive provisions of the proposed water rights compact, the companion tax settlement bill also affects the Northern Cheyenne Tribe in an unintended way. We understand the bill to authorize payment to the Crow Tribe of any state production taxes levied against Crow coal as part of a tax settlement with Crow. If an agreement is reached between the Crow Tribe and the State which includes such a provision, Crow coal will not bear the financial burden of state taxes, and

the immediate result of this arrangement will be to make Northern Cheyenne coal less competitive. In that case, Northern Cheyenne will be required to take such steps as may be necessary to protect the competitiveness of its resources.

We also understand that the Crow Tribe may be negotiating with the federal government to obtain Big Horn storage water without any cost to the Crow Tribe. Because the federal government insisted on payment for the Northern Cheyenne Tribe's Big Horn allocation when sold for municipal or industrial purposes, the marketability of Northern Cheyenne's allocation would also be made less competitive if such an agreement is reached. The Tribe believes that if such a provision is agreed to by the Federal government, it should also be extended to Northern Cheyenne.

CONCLUSION

In order to adequately address our concerns, the proposed compact should be amended in the following manner.

1) Provisions should be added to the compact that fully protect the Northern Cheyenne Tribe's entire Rosebud water right – the 1,800 acre feet and the additional 19,530 acre feet as provided for in the Northern Cheyenne Compact in Article ll.A.3.a and Article ll.A.3.c.

2) A new section should be added which specifically protects the Northern Cheyenne allocation in Big Horn Reservoir and insures that its availability will not be affected by the proposed compact.

3) Article lll, Section A.7 should be amended to include the Northern Cheyenne Tribe as one of the parties to the Streamflow and Lake Level Management Plan.

4) And finally, a general provision should be added that insures that Northern Cheyenne rights are not prejudiced or diminished. This could be accomplished by amending Article V, section A.3 to read:

> Nothing in this Compact is intended to or shall operate to affect, diminish, impair or abrogate a right or claim of an Indian Tribe other than the Crow Tribe.

Sen. Natural Resour
EXHIBIT 15
DATE 6/15/99
SB 1

Testimony of Robert M. Kelly
IN SUPPORT OF -- The Montana - Crow Indian Nation Water Compact (SB 1)

Mr. Chairman and members of the committee:

I thank you for this opportunity to say my piece on the vital issues we face in this Special Session of the Montana State Legislature. For the record, I state that I am an enrolled Crow Tribal Member, owning a significant portion of Reservation farm and ranch Trust Status property. I am the father of several children both adopted and through birth. Two of my grown children are not enrolled members of the Crow Tribe and seven, most grown up, are enrolled. I am also a life time resident of the Crow Reservation and adjacent communities.

I attended College, but choose to consider myself a graduate of Murphy's school of hard knocks who was fortunate enough to survive a semi accident that would have killed anyone with a normal thin skull.

I have been involved in the political arenas on and off for the past twenty five years but became involved in the issues before us today, at or near the first day of February this year. Prior to that time, others and I were ardent opponents of the current Crow Tribal Administration. We strongly advocated action toward a more responsible, democratic government. However, due to the vital nature of the issues involved and the potential impact these matters will have on the future generations of Crow Indians, we chose to set aside our partisan differences, personality problems, self seeking political aspirations and some of our personal grudges in order that we might direct our energies and collective talents toward achieving a fair and just settlement for our people.

At a briefing session here in Helena more than three months past, representatives of our Tribe shared our progress or lack of same as well as the goals we hoped to achieve, with several legislators inclusive of several present today. At that time, I explained how we opponents of Clara Nomee had joined forces on these issues to attempt to bring about a negotiated settlement. I pleaded with those in attendance on that day, that the Montana Legislators follow our example and not allow a partisan tug of war to occur as the Water Compact issues were deliberated. I now reiterate that same plea and thank you for your support based upon study and sound judgment of all the positive elements which are contained in the negotiated agreement here before you.

As I stand before you, I am not an employee of, nor have I drawn any salary from any source for my active full time participation as a Crow Water Rights negotiator. I have done an extraordinary amount of personal research on historical documents as well as pertinent legal issues, litigation and negotiations of other Western Tribes in addition to our own litigated cases. A great deal of material had to be located and dusted, (a lot from my attic archives) and then carefully reviewed by we negotiators in weighing the decision of whether or not the best interests of the entire Crow Tribe would best be served through a State - Tribal negotiation process versus litigation.

We also considered present day circumstances which have made each of these important issues even more pressing to be resolved in order to avoid costly and unpredictable litigation. We also note that the United States Congress in 1952 enacted the McCarran Amendment, and subsequent United States Supreme Court decisions clearly delineated the right of the States to adjudicate all the waters within the various State boundaries.

We were informed by parties to the litigation that the state of Wyoming and Wind Rivers Tribes had each spent in excess of twenty million dollars while attempting to resolve their water related issues in the courts. When the litigation had ended on this case and several others of record, the various parties were back to square one and basically starting behind where we are today. By negotiating, Montana nor our Tribe has to bear the huge expense of litigation which we may measure monetarily, or by the more unmeasurable weight of the hatred and racial polarization resulting from lawsuits.

Today for the record, I wish to compliment the State of Montana for the policy of negotiating these tough water related issues. I also compliment you for the extremely hard working, dedicated personnel, both on and associated with, the compact team. We noted throughout, the frank, honest manner and professionalism they brought to the table in representing you.. Further, in the what ever it is worth department, I also recommend to other Tribes with unsettled issues, that they explore all avenues of negotiated settlement prior to venturing into the uncertain world and finality of litigation.

I find in my old Random House dictionary the definition for Negotiation is: "mutual discussion, aiming at agreement" That sounds a lot simpler than what we just went through, but maybe they didn't consider Treaty Water Rights. Negotiation is a give and take process where neither party will wind up with everything they may have wanted when they started and probably forgot about by time it ended. You negotiate first! In no event, do you go into court and get spanked good, then try to negotiate your way back out of it.

When we set out to negotiate for our people, we realized the diversity of interest on our reservation. We also were aware that in order to negotiate equitably on behalf of the entire Crow Tribal population, we have to represent each and every interest regardless of how much land, money or political influence they might have. There are about ~~four~~ five distinct groups with varied levels of vested interest in the Tribal Water Right.

1) It was stated in a public hearing and/or written testimony, that we have almost five thousand or about half of the enrolled Crow Indians who do not own any land at all. The majority of this group are young adults and children with little ability to speak for themselves on these matters. Never the less they are Crow Indian and they are still entitled to share in any economic benefits of the total Crow Tribal Water Right. A right established for the Tribe as a whole, by treaties which were ratified by the United States Congress and interpreted further by the 1908 Winters - U.S. Supreme Court decision..

Next we have three smaller groups of Crow land owners. The total percentage of these three groups probably would represent approximately seven percent of the total Crow Tribal enrollment.

2) First of these is the Allottee. For the benefit of those who have not spent much time in a Reservation environment and may not know what an Allottee is, my old dictionary defines an Allottee as "a person to whom something is allotted". Sparse few, if any, of these Allottees are still living today.

3) The second classification is the second smallest if not most minute element, of the total Tribe; those who are enrolled in the Crow Tribe and individually own land on the Reservation but have acquired a Patent fee title status on formerly Trust held Allotted lands. In accord with Federal policy and again through interpretation of U.S. Supreme Court "Case Law" , particularly U.S. Vs. Powers U.S.C. 1939 arising from dispute on our Crow Reservation. However small this group may be in the total, they are nonetheless entitled to the equitable use of the Crow Tribal Water Right which was awarded the entire Crow Tribe by Federal Treaty.

4) Next is the group of individual land owners such as myself and five others who were involved in negotiations on behalf of the Tribe. We "land owners" hold individual tracts of farm/grazing land in significant acreage amounts and have maintained the land in Trust Status. We are not "Allottees" but have acquired our land through purchase or heirship.

5) Then we come to the largest group of the Crow Indian Land Owners. This group would probably represent forty to forty three percent of the entire Tribe. These in this group own some degree of fractionated interest in Trust lands located both on and off the present day recognized Reservation boundaries. Some of these Tracts owned by multiple owners, are located very close to the small town of Grey Cliff just East of Big Timber. Again, these Tribal members are also entitled to an equal share of any benefits derived from the total Tribal Water Right established by Federal Treaty. These Crow land owners and other Ceded Area needs were considered when we negotiated a portion of our right to be obtained from a Yellowstone River source.

This classification of Crow Indian land owners is perhaps the most problematic for the Tribe's future quantification of the Allotment portion of the Crow Tribal Water Right as it may pertain to allocation of individual rights. I will submit this actual computer run from official B.I.A. records with a copy of my testimony as well. I will read a few samples from these sheets which will clearly demonstrate the extent of the problem with attempting to allocate individual rights when you have more land owners than acres.

This negotiated compact agreement:

a) will assure our Crow children the opportunities of engaging in enterprise(s) dependent upon fresh water availability.

b) will assure our children of abundant ground water sources for all their future needs.

c) will assure our children of continued harvest of water fowl and fish by protecting the integrity of one of the world's foremost fisheries..

d) will provide much needed funds for present and future infrastructure needs.
e) will protect all users of the Tribal Water Right on an equal basis.
f) provides for future additional uses of water for irrigation and industry both on the reservation and in the Ceded Area..
g) provides many benefits the Crow Tribe would risk losing in litigation.
h) assures equal sharing of any and all economic benefits and water use among enrolled Tribal members
i) assures a supply of stock water, domestic and cultural waters for present and future needs.
j) assures our children of availability of the necessary natural elements to maintain our Crow Indian Cultural identity.

AND IT DIDN'T COST TWENTY FIVE MILLION IN COURT COSTS WHILE CREATING ANOTHER GENERATION OF RACIAL POLARIZATION!!!

Respectfully Submitted,

Robert (Bob) Kelly

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
33E 03S 0029 0260	189	40.00	32.00	8.00	1130079606				X..	
32E 03S 0029 0271	143	80.00	0.00	80.00						
32E 03S 0024 0271-A	136	83.46	0.00	83.46						
32E 03S 0024 0272	14	40.00	0.00	40.00						
32E 03S 0025 0275	89	97.33	0.00	97.33						
32E 03S 0025 0276-B	33	40.00	0.00	40.00						
31E 03S 0027 0277-B	33	120.00	0.00	120.00						
33E 03S 0032 0280	43	220.00	0.00	220.00						
32E 04S 0012 0293	34	80.00	0.00	80.00						
32E 04S 0011 0296	23	56.38	67.00	0.00	1119029601				X..	LEASED ACRES > OWNER ACRES
32E 04S 0011 0298	9	55.20	0.00	55.20						
32E 05S 0003 0300	10	40.00	0.00	40.00						
32E 05S 0003 0302-B	8	20.00	17.50	2.50	1113869505				X..	
32E 04S 0028 0307-B	6	40.00	0.00	40.00						
31E 04S 0036 0318	6	80.00	160.00	0.00	1100739498	1128539803		X..		XX. LEASED ACRES > OWNER ACRES
35E 08S 0022 0324-A	24	17.50	18.75	0.00	1121869702				X..	LEASED ACRES > OWNER ACRES
36E 08S 0031 0324-C	23	80.00	64.30	15.70	1121789702				X..	
35E 08S 0022 0324-H	24	2.50	0.00	2.50						
35E 08S 0014 0330-B	10	0.62	0.00	0.62						
35E 08S 0034 0335	106	40.00	0.00	40.00						
35E 08S 0035 0335	106	80.00	0.00	80.00						
32E 04S 0024 0338-A	7	40.00	0.00	40.00						
32E 04S 0024 0343	68	40.00	0.00	40.00						
27E 03S 0007 0357	108	80.00	0.00	80.00						
35E 04S 0029 0361	74	120.00	0.00	120.00						
35E 04S 0030 0361	74	120.00	0.00	120.00						

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TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
34E 03S 0004 0974	10	99.28	0.00	99.28						
35E 07S 0004 0982	12	160.00	0.00	160.00						
34E 02S 0026 0988-A	12	5.00	0.00	5.00						
31E 06S 0036 0993-B	13	160.00	0.00	160.00						
31E 06S 0036 0995	11	120.00	0.00	120.00						
37E 02S 0022 0996	13	160.00	0.00	160.00						
~~37E 02S 0023 0996~~	~~13~~	~~120.00~~	~~0.00~~	~~120.00~~						
38E 01S 0029 0996	13	280.00	0.00	280.00						
~~38E 01S 0032 0996~~	~~13~~	~~280.00~~	~~0.00~~	~~280.00~~						
~~37E 02S 0022 0996-A~~	~~7~~	~~160.00~~	~~0.00~~	~~160.00~~						
37E 02S 0023 0996-A	7	120.00	0.00	120.00						
31E 06S 0010 0997	**31**	**37.39**	0.00	37.39						
36E 04S 0004 1001-C	17	120.55	241.10	0.00	1119779698	1139049808		Y..		XX. LEASED ACRES > OWNER ACRES
33E 02S 0033 1002	8	40.00	80.00	0.00	1114099498	1130649803		X..		XX. LEASED ACRES > OWNER ACRES
34E 02S 0011 1007	8	80.00	0.00	80.00						
34E 02S 0011 1009-A	26	40.00	0.00	40.00						
34E 02S 0024 1015-A	**189**	**40.00**	0.00	40.00						
34E 02S 0024 1015-B	25	23.31	22.90	0.41	1119769606				X..	
34E 02S 0024 1016-A	6	5.00	0.00	5.00						
34E 02S 0024 1017	**59**	**40.00**	0.00	40.00						
34E 02S 0023 1022	15	120.00	0.00	120.00						
34E 02S 0008 1024	84	240.00	0.00	240.00						
34E 02S 0008 1025	78	80.00	0.00	80.00						
33E 04S 0035 1026-G	13	80.00	0.00	80.00						
34E 02S 0008 1027	18	80.00	0.00	80.00						
~~34E 02S 0017 1027~~	~~18~~	~~160.00~~	~~0.00~~	~~160.00~~						
~~34E 02S 0008 1028~~	~~84~~	~~120.00~~	~~0.00~~	~~120.00~~						
34E 02S 0013 1028	84	40.00	0.00	40.00						

TRACT-IDENTIFICATION		NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
35E 02S 0005	1028	84	383.71	0.00	383.71						
35E 02S 0006	1028	84	358.57	0.00	358.57						
37E 07S 0006	1033	17	119.79	0.00	119.79						
36E 06S 0036	1034	15	240.00	0.00	240.00						
36E 06S 0019	1035	19	40.00	0.00	40.00						
36E 06S 0019	1037	12	42.11	0.00	42.11						
35E 09S 0006	1040-A	19	40.00	0.00	40.00						
37E 01S 0010	1042	8	160.00	0.00	160.00						
37E 01S 0011	1042	9	320.00	0.00	320.00						
34E 02S 0011	1044	6	40.00	0.00	40.00						
35E 04S 0030	1049	179	55.40	0.00	55.40						
34E 01S 0033	1053	10	31.77	8.51	23.26	1123149702				X..	
34E 01S 0033	1053-A	7	2.50	0.00	2.50						
34E 01S 0023	1059-E	9	20.00	0.00	20.00						
34E 01S 0024	1059-E	9	80.00	0.00	80.00						
32E 05S 0002	1066	11	40.00	0.00	40.00						
34E 01S 0020	1089	34	4.28	0.00	4.28						
34E 01S 0034	1098	78	40.00	0.00	40.00						
37E 04S 0033	1114	40	160.00	0.00	160.00						
35E 04S 0015	1118	34	80.00	0.00	80.00						
35E 04S 0028	1120	21	74.68	60.00	14.68	1107439499				X..	
35E 04S 0015	1125	12	80.00	0.00	80.00						
35E 04S 0021	1139-B	10	5.00	0.00	5.00						
35E 04S 0034	1142-B	10	40.00	28.43	11.57	1110349499				X..	
35E 04S 0033	1142-C	10	80.00	40.00	40.00	1110349499				X..	
35E 04S 0028	1149	59	40.00	0.00	40.00						

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TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
38E 03S 0032 1551-B	48	400.00	171.60	228.40	1131719601				X .	
36E 04S 0005 1551-B	48	171.60	400.00	0.00	1121719601				XL	LEASED ACRES > OWNER ACRES
33E 04S 0006 1558	12	80.00	79.60	0.40	1118619601	1119609606			XX.	
36E 06S 0019 1575-A	12	40.00	0.00	40.00						
38E 07S 0008 1580-B	30	480.00	0.00	480.00						
38E 07S 0009 1580-B	30	20.00	0.00	20.00						
36E 07S 0033 1588	45	400.00	320.00	80.00	1121049601				X..	
36E 07S 0028 1590	32	160.00	0.00	160.00						
36E 07S 0029 1590	32	160.00	0.00	160.00						
36E 07S 0032 1590	32	40.00	0.00	40.00						
36E 07S 0033 1590	32	80.00	0.00	80.00						
35E 07S 0001 1592-A	25	240.13	0.00	240.13						
35E 07S 0010 1594-A	13	240.00	0.00	240.00						
37E 05S 0007 1594-C	6	40.00	0.00	40.00						
35E 07S 0010 1596-A	13	69.53	0.00	69.53						
35E 07S 0011 1596-A	13	80.00	0.00	80.00						
33E 08S 0032 1597	6	160.00	0.00	160.00						
35E 07S 0001 1598	40	80.39	0.00	80.39						
37E 07S 0029 1598	40	240.00	208.82	31.18	1122019702				X..	
37E 07S 0017 1599	24	160.00	157.98	2.02	1121949702	1122449702			XX.	
35E 08S 0011 1618-A	6	60.00	0.00	60.00						
35E 09S 0009 1648	209	120.00	0.00	120.00						
35E 09S 0004 1649	110	120.00	0.00	120.00						
35E 09S 0006 1651-A	8	40.08	40.00	0.08	1126699702				X..	
35E 09S 0006 1652-A	21	40.00	0.00	40.00						
35E 09S 0019 1652-D	9	145.00	0.00	145.00						
37E 07S 0018 1669	24	146.38	143.13	3.25	1121879702				X..	
35E 09S 0001 1674-A	10	191.89	169.49	22.49	1129619803				X..	

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
32E 02S 0028 M0078	14	120.00	0.00	120.00						
35E 01S 0036 M0078-C	14	40.00	0.00	40.00						
30E 05S 0014 M0079	171	40.00	0.00	40.00						
30E 05S 0023 M0079	171	40.00	0.00	40.00						
32E 02S 0028 M0079	171	40.00	0.00	40.00						
33E 01S 0025 M0079	171	40.00	0.00	40.00						
32E 02S 0021 M0082	69	80.00	0.00	80.00						
33E 01S 0026 M0094	11	40.00	0.00	40.00						
33E 01S 0035 M0094	11	40.00	0.00	40.00						
33E 01S 0026 M0095-A	33	40.00	0.00	40.00						
33E 01S 0027 M0097-A	8	40.00	0.00	40.00						
33E 01S 0035 M0106	42	40.00	0.00	40.00						
33E 02S 0017 M0106	42	80.00	0.00	80.00						
33E 02S 0018 M0106	42	40.00	0.00	40.00						
33E 02S 0009 M0108-A	41	80.00	0.00	80.00						
33E 02S 0009 M0109	41	80.00	0.00	80.00						
33E 02S 0008 M0109-A	41	39.48	0.00	39.48						
33E 02S 0009 M0109-A	41	40.00	0.00	40.00						
34E 02S 0023 M0111-A	31	80.00	0.00	80.00						
33E 01S 0035 M0112-B	7	2.50	0.00	2.50						
33E 02S 0013 M0119-A	10	60.00	0.00	60.00						
33E 02S 0003 M0121-A	7	80.27	0.00	80.27						
33E 02S 0002 M0126	24	40.17	0.00	40.17						
34E 02S 0030 M0126	24	80.00	0.00	80.00						
34E 02S 0031 M0126	24	40.00	0.00	40.00						
33E 02S 0002 M0127-A	20	39.55	0.00	39.55						
33E 02S 0002 M0127-B	20	0.62	0.00	0.62						
33E 02S 0012 M0128-C	30	20.00	0.00	20.00						
34E 02S 0007 M0128-C	30	40.00	0.00	40.00						
33E 02S 0002 M0129-B	19	40.15	0.00	40.15						

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	EPROK
35E 04S 0016 M1140	18	40.00	0.00	40.00						
36E 04S 0031 M1140-B	10	60.00	0.00	60.00						
35E 04S 0028 M1143-A	17	80.00	0.00	80.00						
36E 04S 0028 M1159-B	10	120.00	0.00	120.00						
33E 08S 0017 M1163-B	46	80.00	0.00	80.00						
35E 04S 0029 M1164	11	40.00	0.00	40.00						
33E 08S 0017 M1164-A	15	120.00	0.00	120.00						
35E 05S 0004 M1166	42	120.00	0.00	120.00						
35E 04S 0032 M1170-A	11	80.00	0.00	80.00						
35E 04S 0033 M1170-B	12	80.00	0.00	80.00						
35E 04S 0032 M1173	319	120.00	0.00	120.00						
35E 04S 0033 M1173-A	110	40.00	0.00	40.00						
33E 08S 0030 M1180	20	234.20	0.00	234.20						
35E 05S 0009 M1181-A	15	40.00	0.00	40.00						
33E 08S 0030 M1181-B	15	80.00	0.00	80.00						
35E 05S 0021 M1194	15	120.00	0.00	120.00						
35E 05S 0022 M1194	15	34.50	0.00	34.50						
35E 05S 0022 M1194-A	44	5.50	0.00	5.50						
35E 05S 0022 M1195-B	20	80.00	0.00	80.00						
35E 05S 0010 M1202	163	160.00	0.00	160.00						
36E 07S 0002 M1214-C	33	239.41	0.00	239.41						
36E 06S 0035 M1215-A	33	140.00	0.00	140.00						
36E 06S 0035 M1215-B	33	2.50	0.00	2.50						
36E 06S 0035 M1215-C	33	2.50	0.00	2.50						
36E 06S 0035 M1215-D	33	15.00	0.00	15.00						

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
35E 09S 0007 M1379	29	160.02	0.00	160.02						
34E 08S 0026 M1390-A	9	120.00	0.00	120.00						
34E 07S 0023 M1402-A	35	120.00	0.00	120.00						
34E 07S 0015 M1406-C	8	77.50	0.00	77.50						
34E 07S 0022 M1408-A	9	120.00	0.00	120.00						
32E 04S 0013 M1417	279	40.00	0.00	40.00						
35E 06S 0029 M1425	30	40.00	0.00	40.00						
35E 06S 0029 M1426-A	9	40.00	0.00	40.00						
35E 06S 0029 M1426-B	9	40.00	0.00	40.00						
35E 06S 0029 M1427-F	9	20.00	0.00	20.00						
35E 06S 0029 M1428-B	17	40.00	0.00	40.00						
35E 06S 0022 M1430-B	18	2.50	0.00	2.50						
35E 06S 0015 M1436-B	7	160.00	0.00	160.00						
35E 06S 0015 M1437-A	7	80.00	0.00	80.00						
35E 04S 0009 M1440-A	9	160.00	0.00	160.00						
35E 06S 0011 M1450	7	29.23	0.00	29.23						
36E 06S 0005 M1450-A	7	120.00	0.00	120.00						
35E 08S 0021 M1481-B	23	40.00	0.00	40.00						
35E 05S 0003 M1490-A	17	120.00	0.00	120.00						
35E 08S 0029 M1490-B	17	40.00	0.00	40.00						
35E 06S 0003 M1491	17	120.00	0.00	120.00						
36E 06S 0018 M1496	6	44.00	0.00	44.00						
36E 06S 0017 M1496-C	6	80.00	0.00	80.00						
35E 08S 0032 M1505-B	7	40.00	0.00	40.00						
35E 06S 0013 M1515-A	10	40.00	0.00	40.00						

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EXHIBIT 17
DATE 6/15/99
SB 1

CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, Montana 59022
(406) 638-2601

Crow Country

Clara Nomee, Madam Chairman
Joseph Pickett, Vice Chairman
Dennis Big Hair Sr., Secretary
Cornelius Little Light, Vice Secretary

June 3, 1999

Members of the Montana Legislature
State Capital
Helena, MT. 59620

Dear Montana Legislature:

We the undersigned members of the Crow Tribe support the **Water Rights Settlement Compact** between the State of Montana, U.S. Government and Crow Tribe. We represent the majority members of the Crow Tribe and request the Montana Legislature to passed the **Water Rights Settlement Compact** in their special legislative session on June 15, and 16, 1999.

NAME	HOME TOWN
Wynona Men Bear	Crow Agency mt
Caroline Miller	Crow Agency
Vance L Matt	Crow Agency
Georgia R Falls Day	Crow Agency mt
Stephen Old Bear	Crow Agency
Gaylon L Wilkinson	Crow Agency
Rachal M. Pretty On Top	Crow Agency mt
Elroy J Womel	Lodge Grass mt
Woodrow Pretty on Top	Hardin mt
Sophia Pretty on Top	" "
Greg Dawes	Hardin mt

(additional signature sheets attached)

NAME	HOME TOWN
Ramona Buck Bear	Lodge Grass, Mt.
Myron Old Bull	Lodge Grass MT
[illegible]	Crow Agency MT
[illegible]	Crow Agency
[illegible]	Pryor, MT
Marilyn Spellman	Hardin, MT
[illegible]	Lodge Grass, MT
[illegible]	Lodge Grass MT
Wesson Stewart	Pryor MT
Susan Ricks Horse	" "
Joyce Old Bear	Lodge Grass
Ralph Cheney Jr.	Hardin
[illegible]	
Jerry Spirit	Lodge Grass MT
Joey Old Dog	Lodge Grass MT
Judy Morrison	Lodge Grass MT
Dolene White Clay	Crow Agency
John Yellowtail	Lodge Grass
Eleda Not Afraid Sr.	Crow Agency MT
Brandon Little Owl	"
Carl Eastman	Hardin MT
William Bird Bear	Crow Agency MT
Karma Pretty Paint	Crow Agency
Velvette Three Irons	Crow Agency
Tillie Whiteman	Crow Agency

CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, Montana 59022
(406) 638-2601

Crow Country

Clara Nomee, Madam Chairman
Joseph Pickett, Vice Chairman
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NAME	HOME TOWN
Charlene In. Laverdure	POBOX5-PryorMT 59066
Gretchen Mc. Old Bear	POBOX125 Crow Agency MT
Marie M Old Bull Boy,	Crow Agency MT 5902L
Charlotte Spotted Horse	Lodge Grass MT
Clarence Horn	Lodge Grass MT 59050
Joseph V half	Crow Agency MT 59022
Lawson Dawes	Hardin MT 59034
Marvin Dawes	Hardin MT 5903[illegible]
Orlo Dawes	Garryowen
Magdaline Bonko	Garryowen MT
Tom Bonko Sr	"

(additional signature sheets attached)

NAME	HOME TOWN
[illegible]	Wyola MT
[illegible]	Fort Smith
[illegible]	Crow Agency
[illegible]	Crow Agency
[illegible]	Pryor
[illegible]	Lodge Grass
[illegible]	[illegible]
Eleanor Betty Ontop	Lodge Grass, MT
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	Pryor
[illegible]	Crow
Carrie [illegible]	Ft. Smith
Loretta Dickens Ground	Lodge Grass, Mt.
[illegible]	Crow Agency
[illegible]	[illegible]
[illegible]	Crow Agency MT.
[illegible]	Wyola
Letha Spotted Horse	Lodge Grass
Nita J. Spotted Horse	Lodge Grass
Leslie Byrds	Lodge Grass
[illegible]	St. X
Carmen White Hip	Lodge Grass, Mt.
Tatanka QQ OK	Lodge Grass,
[illegible]	Two Leggins
[illegible]	Crow Agency

NAME	HOME TOWN
[illegible]	P.O. #568 Crow Agency, Mt 59022
[illegible]	Lodge Grass Mt
Paul Spotted Horse, Sr.	Lodge Grass, MT.
[illegible]	Lodge Grass, MT
[illegible]	Lodge Grass, MT
[illegible]	Crow Agency Mt.
[illegible]	Crow Agency,
[illegible]	
RONALD FLATMOUTH	Benteen
[illegible]	
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	Prior Mt
[illegible]	Prior Mt
[illegible]	Prior Mt
[illegible]	Bridger, MT
[illegible]	Lodge Grass,
[illegible]	
[illegible]	[illegible]
[illegible]	Lodge Grass
[illegible]	Lodge Grass
[illegible]	Crow Agency
[illegible]	Lodge Grass
[illegible]	Dayton Mont
[illegible]	Lodge Grass Mt.
[illegible]	Lodge Grass MT
[illegible]	Lodge Grass MT

NAME	HOME TOWN
[illegible]	Garryowen, MT.
[illegible]	Wyola, MT
Grace Kellum	Crow Agency
Roberta Stevens Jr	Crow Agency MT
Bradley Rides Horse	Hardin MT
[illegible]	Wyola MT
Rebecca White	Wyola, MT
[illegible]	Hardin MT
Luther Full Bowl	Lodge Grass, MT
Paulette Tobacco	Lodge Grass, MT
[illegible]	[illegible]
Kimberly Sun Goes Slow	
Kristie Adams	Crow Agency
Raymond Stewart	
Paul Matt Jr	Crow Agency, MT 59022
Dana Bear Claw	Lodge Grass MT
[illegible]	Lodge Grass, MT
Ellen Lee Three Irons	Hardin MT
Mark White	Bryon, MT.
Amanda Horn	Bryon MT
[illegible]	Wyola MT.
Jean Falls Down	Lodge Grass MT
[illegible]	Bryon, MT
Iglora Stringfellow	Bryan, MT
[illegible]	Bryon MT

NAME	HOME TOWN
Eldridge Walks Over Ice	Lodge Grass MONT.
Nancy J. Hunter	Lodge Grass, MT
Marlon Yarlett	CROW AGENCY, MT
Lonnie Bull Coat	Crow Agency, MT.
Alfred Took	Lodge Grass MT
Ronald Littmaster	Hardin MT.
Dessie Old Horn	Crow Agency, MT.
Neil White Hip	Hardin, MT
Irene Reed	Ft Smith
Earl Archie	Pryor
Kimmy Walker	Crow Agency, MT
Anthony Real Bird	Crow Agency mont.
John C. Limberhand Sr.	Pryor MT
Eleanor Cottington	Pryor MT
Elma Blackwood	Hardin MT
Ramona Chance	Crow Agency MT 59022
Beulah Hammerly	Crow Agency, MT 59022
Tom Dawes	Crow Agency MT
OR TIED	Lodge Grass MT
Harvin Smith Grant	Crow Agency, MT 59022
Lavon Wilson	Crow Agency MT
Jerri F. Whiteman	Lodge Grass MT
Faye Ware Sr.	Crow Agency MT.
Constance L Comes Up	Pryor MT.
Clyde Tall Bull	Pryor, MT

NAME	HOME TOWN
Clarence Good Luck	Crow Agency
Agnes Good Luck	
Charles Up Grave	Pryor
Brenda Fugleston	Black Feet Indian
Dianna Hoem	Niegara
Bonnie Brown	Crow Agency
Marcella Crowe	Pryor, MT.
Edward W. Quinn Sr.	Hilger, MT.
Ida M. Real Bird	Crow Agency
Melvin Wm. Hogan	Crow Agency
Clifton Pretty Weasel	Lodge Grass
Sarah A. Take Him Alive	Crow Agency
Agnes Left Hand	Crow Agency MT
Viola Tyler	Pryor, MT
Lyman Medicine Crow	Pryor MT
Carson Old Elk	Pryor, MT
Wayne Burnpleat	Pryor MT
Marjorie Hogan	Lodge Grass MT 59050
Kathryn A. White Clay	Lodge Grass MT 59050
Lorna J. Big Hair	Pryor MT
Edward Big Hair	Pryor MT
Mona Tall Bull Sr.	Lodge Grass, MT.
Darold Medicine Crow	Crow Agency
Seraphine Real Bird	Crow Agency
Patricia C. Nomee	Lodge Grass

NAME	HOME TOWN
Clinton Nomee	Lodge Grass, MT.
Dennis Brave	Lodge Grass —
Trudy Old Crane	Crow Agency, MT.
[illegible]	Hyn, MT
[illegible]	Crow Agency MT
[illegible]	2nd Bridge MT
[illegible]	Crow Agency MT
[illegible]	Hardin, MT
[illegible]	[illegible], MT
[illegible]	Crow Agency, MT
[illegible]	[illegible]
[illegible]	Papoose MT
[illegible]	Lodge Grass MT
[illegible]	Lodge Grass MT
[illegible]	[illegible]
[illegible]	Crow Agency MT. 59022
[illegible]	[illegible]
[illegible]	[illegible]
Cornelia Medicine Horse	Pryor MT
[illegible]	[illegible]
[illegible]	Pryor MT.
[illegible]	Crow Agency
[illegible]	Crow Agency
Gale Three Irons	Hardin MT
Mary Three Irons	Hardin MT

CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, Montana 59022
(406) 638-2601

Crow Country

Clara Nomee, Madam Chairman
Joseph Pickett, Vice Chairman
Dennis Big Hair Sr., Secretary
Cornelius Little Light, Vice Secretary

June 3, 1999

Members of the Montana Legislature
State Capital
Helena, MT. 59620

Dear Montana Legislature:

We the undersigned members of the Crow Tribe support the **Water Rights Settlement Compact** between the State of Montana, U.S. Government and Crow Tribe. We represent the majority members of the Crow Tribe and request the Montana Legislature to passed the **Water Rights Settlement Compact** in their special legislative session on June 15, and 16, 1999.

NAME	HOME TOWN
Annie Takes Gun Rock	Lodge Grass MT
Linda Ten Bear	Crow Agency MT
Darlene White	Lodge Grass
Bob Kelly	
Alvin B. Plain Bull	Fort Smith 59035
Amelia Often Medicine	Crow Agency 59022
Evelyn Stewart Sr	Crow Agency MT
Terrence Ten Bear	Crow Agency MT
Jaychelle Ten Bear	Crow Agency MT
Jacob Big Hair Jr	Garryowen MT
Lynn Big Hair	" "

(additional signature sheets attached)

NAME	HOME TOWN
[illegible]	[illegible]
Lucy Takes The Horse-Tikka	Wyola
Ingalun Old	Crow
Howard B. Shane	Lodge Grass
Jimmie Pease Pretty On Top	Lodge Grass
Esther C. Helen Sr.	Crow Agency
Cynthia L. Hogan	Crow Agency
Helen F. Hogan	Crow Agency
Randon Little Light	Crow Agency
Unborn Born Dec 12	Crow Agency
Strawbird	Billings
Chester Turnsplenty	Billings
Samuel Hogan Sr.	
Violet S Enick	
Nellie Whiteman	
Donna Takes Enemy	
Stytha C Yellowtail	Black Lodge
Avalon Takes Horse	Pryor
Linda Frost	Billings
Dorothea Adams	Crow
Nellie Pretty	"
Thomas Bighorn	
William Howard	Crow
Marie Omana	
Vernon White Clay	Crow

NAME	HOME TOWN
[illegible]	Crow Agency, MT
[illegible]	" " "
[illegible]	Lodge Grass
[illegible]	Lodge Grass
Mary L Stewart	Dunmore
Indira Olive Medicine	Crow Agency, Mt
(16) Samuel Hogs Jr.	Lodge Grass
Chris Comes Last	Pryor Mt
Bernice Corey Hogs	Pryor, MT. 59066
William Three Irons	Crow Agency, MT 5902
Lynn Bull Tail	Crow Agency MT 59022
Marlene Stewart	Wyola Montana
Darrell Old Elk	Crow Agency MT
Lawrence Tim Big Hoop	Crow Agency MT 59022
Ley Ten Bear	Crow Agency MT. 59022
Leon Old Bear	Lodge Grass, MT 59050
[illegible]	Lodge Grass, Mt. 59050
[illegible]	Crow Agency, MT 5902
Victoria Crooked Arm	Crow Agency MT 59022
Dale Crooked Arm	Crow Agency MT 59022
Johnny Pine	Crow Agency, MT
Victor Yarlott	Lodge Grass MT
Max Powle	Lodge Grass
Shyla Old Bull Powle	Lodge Grass
Delmyra J. Yarlott	Garryowen MT

CROW TRIBAL COUNCIL

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June 3, 1999

Members of the Montana Legislature
State Capital
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Dear Montana Legislature:

We the undersigned members of the Crow Tribe support the **Water Rights Settlement Compact** between the State of Montana, U.S. Government and Crow Tribe. We represent the majority members of the Crow Tribe and request the Montana Legislature to passed the **Water Rights Settlement Compact** in their special legislative session on June 15, and 16, 1999.

NAME	HOME TOWN
Thomas Backbone	Lodge Grass MT
Patricia LittleLight	Lodge Grass MT
Stephen White	Crow Agency
Paul Left Hand	Crow Agency
Dennell Costa	Crow Agency MT
Roslyn Ten Bear	Crow Agency MT
Clayce Little Light	Garryowen MT
Danny Brien	Crow Agency MT
Jordan Brien	
Steven Stevens	Lodge Grass

(additional signature sheets attached)

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NAME	HOME TOWN
Harold Dee Old Crow	Hardin
Randall Passes Sr.	Crow
Wayne Not afraid	Lodge Grass
Regina J. Bear Claw	Lodge Grass, MT
Mark Pretty Paul	Hardin
Elizabeth Reece	Hardin
Arthur Alden Jr.	Crow
Virjama Pretty Weasel	Crow
Jerry C. Pretty Weasel Sr.	Crow
Carlee Left Hand	Pryor
Bill Stops	Wyola
Gail Stops	Wyola
Vernie Plain Feather	Pryor
Pinita Plain Feather	
Clarissa Stewart	Lodge Grass
Kathy Dawn	Pryor
Hyde Left Hand	Billings, MT
[illegible]	
Jay Pretty	Crow
Dain Pretty Paint	Crow
Valentine Dawn Jefferson	Lodge Grass
Clarmin P. Whitemud	Crow
Kari JB	Yellowtail
Jairin Medicine Crow Jr.	Wyola
Martin L. Stops	Lodge Grass

NAME	HOME TOWN
Geneva Otter Medicine	Crow
Jennyball White	Crow
Carlton Yellowtail Sr.	[illegible]
Judy Glenn Ayers	
Ada M. White	Crow Agency, Mt.
Valerie F. Iron	Ft Smith, MT
Joyce Little Light	Pryor
Jordan [illegible] Rides	Lodge Grass
Jessica Takes the Horse	Crow Agency
Garnet Watan	
Hanes B. Bull	
Carrie Old Coyote	Crow Agency
Dennis Deaver	Crow Agency
Pete Backbone	Todd Mtns
Ralph [illegible]	Crow Agency
Joe Left Hand, Sr.	Lodge Grass, MT.
Christine Good Luck	Crow Agency, MT.
Rosemary Smith	Crow Agcy, MT
Helen Iron	Ft Smith, MT
[illegible]	
Edward P. Whiteman	Pryor, MT.
Gary B. Davis	Crow Agency, MT
Norman Hawes Sr.	Crow Agency, MT.
[illegible]	Lodge Grass
[illegible]	Lodge Grass

A PETITION IN SUPPORT
OF THE
CROW TRIBE-STATE OF MONTANA
WATER COMPACT

Which includes the attached list of advantages for the Crow Tribe.

We, the undersigned, all duly enrolled and voting members of the Crow Tribe and the Crow Tribal Council, the governing body of the Crow Tribe, hereby express our committment to and firm support of the proposed water compact between the State of Montana and the Crow Tribe. We ask that you look favorably upon this compact and vote in favor of it.

1. Bob Kelly
2. Dinah Stewart
3. Mary Bird Hat
4. Duke DeCrane Sr.
5. Raymond Starnes Overfield
6. Conrad Starnes
7. Chester Not Afraid
8. Gail Bird Hat
9. Brian C. Yellowtail
10. Loretta Moccasin
11. Roger Clawson
12. Amy Moccasin
13. Urban J. Bear Don't
14. Charles Kelly
15. [illegible]
16. [illegible]
17. [illegible]
18. [illegible]
19. [illegible]
20. [illegible]
21. [illegible]
22.
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18 opposition 2

Sen. Natural Res
EXHIBIT 18
DATE 1/15/99
SB 1

POSITION STATEMENT SUPPORTING CONTINUED NEGOTIATIONS OF CROW WATER COMPACT

A. INTRODUCTION

1. Opposition to Compact in its Present Form

a. Negotiations leading to a Compact preferable to litigation. Purpose of Compacting- to achieve a fair and equitable determination of water rights and water use

b. Avoidance of litigation after State ratification should be considered now

c. No position taken on the respective parties equities/entitlements

d. Analysis is color blind

e. What are the consequences of the compact upon Allottees

2. Federal Compact Goals (Exhibit A)

a. U. S. participates as Trustee for *Indians*

b. *Indians* receive equivalent benefits for rights

c. *Indians* obtain the ability as part of each settlement to realize value from confirmed water rights resulting from the settlement.

d. The settlement contains appropriate cost sharing by all parties benefiting from the settlement.

3. History of past negotiation meetings (Exhibit B) 1998: 1; 1999: 7

B. ALLOTTEES LEGAL RIGHTS

1. Federal Compact procedures

Criteria:

"3. Settlements should be completed in such a way that all outstanding water claims are resolved and finality is achieved.

" 7. Settlements should be structured to promote economic efficiency on reservations and Tribal self-sufficiency."

Procedures:

"Phase I-Fact Finding:

" 3.c. A summary and evaluation of the claims asserted for the *Indians*.."

"Phase II- Assessment and Recommendations:

" 1.b. An analysis of the value of the water claim for the *Indians*."

2. 25 CFR Sec 1.4(a)-State and local regulation of the use of Indian property;

"none of the laws... of any state relating to the use or development of any real property..., including water rights, shall be applicable to such property...belonging to any Indian...held in trust by the US ..."

25 CFR 1.4(b) - Sec of Interior..."shall determine what [laws, etc.] is in the best interest of the Indian owner or owners in achieving the highest and best use of such property..."

3. Colville v Walton ((Exhibit C):

a) " It is settled that Indian Allottees have a right to use reserved water";

b) "...an Indian Allottee may sell his right to reserved water";

c) "...the extent of an Indian allottee's right is based on the number of irrigable acres he owns";

d) "...the Indian allottee's right has a priority as of the date the reservation was created";

e) " the Indian allottee does not lose by non-use the right to a share of the reserved water".)

C. LEGAL REPRESENTATION OF ALLOTTEES

1. Allottees: Lack of participation/representation of Allottees, and lack of a definitive and specific overall analysis of Allottees' water rights;
2. Tribal: Has not represented Allottees' interests in the Compact negotiations;
3. BIA: Has apparently made no appearance on behalf of Allottees;
4. Result of lack of representation of allottees:
   a. No determination of Allottees' water rights;
   b. No determination and quantification of Allottees' water needs;
   c. No specific quantification of Allottees' reserved water needs as compared with Tribal water needs;
   d. A "taking" without compensation, violates of Allotees' Fifth Amendment right;
   e. Allottees' land value diminished without appurtenant water right;
   f. Allottees caused irreparable damages. (Exhibit D, E)

D. LACK OF FINALITY

1. Indian/Non-Indian
2. Crow Allottee
3. Big Horn River management plan
4. Passes Creek
5. Crow water code
6. Section 2, and all opt outs

RESULT: Endless litigation (Exhibit F)

E. SECTION 2 ISSUE

1. Water rights should be evaluated/analyzed/allocated only after Section 2 issue is resolved;

F. CALCULATION OF STATE WATER RIGHT COMPENSATION

None
See Exhibit A

G. DO THE BENEFITS OUTWEIGH THE BURDENS?
ARE YOUR CONSTITUENTS WILLING TO PAY HUNDREDS OF THOUSANDS OF TAX DOLLARS FOR DECADES OF LITIGATION RATHER THAN TO HAVE THE WATER RIGHTS TEAMS CONTINUE TO NEGOTIATE A SETTLEMENT THAT AVOIDS THREATENING LITIGATION?

DEPARTMENT OF THE INTERIOR

Working Group in Indian Water Settlements; Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims

AGENCY: Department of the Interior.

ACTION: Policy Statement.

SUMMARY: It is the policy of this Administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R. 932, the 1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation. Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlement of claims concerning Indian water resources.

EFFECTIVE DATE: March 12, 1990.

ADDRESSES: Comments may be addressed to: Mr. Tim Glidden, Department of the Interior, MS 6217-MIB, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Glidden, Chairman, Working Group on Indian Water Settlements, 202-343-7351.

SUPPLEMENTARY INFORMATION: These criteria and procedures were developed by the Working Group on Indian Water Settlements from the Department of the Interior.

These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

Dated: March 9, 1990.

Timoothy Glidden,

Chairman, Working Group on Indian Water Settlements.

Criteria and Procedures for Indian Water Rights Settlements

Preamble

Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indians.

It is the policy of this Administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R. 932, the 1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation.

Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlements of claims concerning Indian water resources. These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

Criteria

1. These criteria are applicable to all negotiations involving Indian water rights claims settlements in which the Federal Government participates. Claims to be settled through negotiation may include, but are not limited to, claims:

(a) By tribes and U.S. Government to quantify reserved Indian water rights.

(b) By tribes against the U.S. Government.

(c) By tribes and the U.S. Government against third parties.

2. The Department of the Interior will support legislation authorizing those agreements to which is is a signatory party.

3. Settlements should be completed in such a way that all outstanding water claims are resolved and finality is achieved.

4. The total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government.

5. Federal contributions to a settlement should not exceed the sum of the following two elements:

a. First, calculable legal exposure—litigation cost and judgment obligations if the case is lost; Federal and non-Federal exposure should be calculated on a present value basis taking into account the size of the claim, value of the water, timing of the award, likelihood of loss.

b. Second, additional costs related to Federal trust or programmatic responsibilities (assuming the U.S. obligation as trustee can be compared to existing precedence.)—Federal contributions relating to programmatic responsibilities should be justified as to why such contributions cannot be funded through the normal budget process.

6. Settlements should include non-Federal cost-sharing proportionate to the benefits received by the non-Federal parties.

7. Settlements should be structured to promote economic efficiency on reservations and tribal self-sufficiency.

8. Operating capabilities and various resources of the Federal and non-Federal parties to the claims negotiations should be considered in structuring a settlement (e.g. operating criteria and water conservation in Federal and non-Federal projects).

9. If Federal cash contributions are part of a settlement and once such contributions are certified as deposited in the appropriate tribal treasury, the U.S. shall not bear any obligation or liability regarding the investment, management, or use of such funds.

10. Federal participation in Indian water rights negotiations should be conducive to long-term harmony and cooperation among all interested parties through respect for the sovereignty of the States and tribes in their respective jurisdictions.

11. Settlements should generally not include:

a. Local contributions derived from issuing bonds backed by or guaranteed by the Federal Government.

b. Crediting to the non-Federal share normal project revenues that would be received in absence of a cost share agreement.

c. Crediting non-Federal operation, maintenance, and rehabilitation (OM&R) payments to non-Federal construction cost obligations.

d. Imposition by the Federal Government of fees or charges requiring

EXHIBIT A

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authorization in order to finance the non-Federal share.

e. Federal subsidy of OM&R costs of Indian and non-Indian parties.

f. U.S. participation in an economically unjustified irrigation investment; however investments for delivery of water for households, gardens, or domestic livestock may be exempted from this criterion.

g. Per-Capita distribution of trust funds.

h. Crediting to the Federal share existing annual program funding to tribes.

i. Penalties for failure to meet a construction schedule. Interest should not accrue unless the settlement does not get budgeted for as specified in item 15 below.

j. Exemptions from Reclamation law.

12. All tangible and intangible costs to the Federal Government and to non-Federal parties, including the forgiveness of non-Federal reimbursement requirements to the Federal Government and items contributed per item 8 above, should be included in calculating their respective contributions to the settlement.

13. All financial calculations shall use a discount rate equivalent to the current water resources planning discount rate as published annually in the Federal Register.

14. All contractual and statutory responsibilities of the Secretary that affect or could be affected by a specific negotiation will be reviewed.

15. Settlement agreements should include the following standard language: Federal financial contributions to a settlement will normally be budgeted for, subject to the availability of funds, by October 1 of the year following the year of enactment of the authorizing legislation (e.g., for a settlement enacted into law in August 1990, funding to implement it would normally be contained in the FY 1992 Budget request and, if appropriated, be available for obligation on October 1, 1991).

16. Settlements requiring the payment of a substantial Federal contribution should include standard language providing for the costs to be spread-out over more than one year.

Procedures

Phase I—Fact Finding

1. The Department of the Interior (Department) will consider initiation of formal claims settlement negotiations when the Indian tribe and non-Federal parties involved have formally requested negotiations of the Secretary of the Interior (Secretary).

2. The Department will consult with the Department of Justice (Justice) concerning the legal considerations in forming a negotiating team.

If Department decides to establish a team, the Office of Management and Budget (OMB) and Justice shall be notified, in writing. Justice should generally be a member of any negotiating team.

a. The Department's notification should include the rationale for potential negotiations, i.e., pending litigation and other background information about the claim already available, makeup of the team (reason that Justice is not a member of a team, if applicable), and non-Federal participants in the settlement process.

b. The date of the notification marks the beginning of the fact-finding period.

3. Not later than nine months after notification, a fact-finding report outlining the current status of litigation and other pertinent matters will be submitted by the team to the Department, OMB, and Justice. The fact-finding report should contain information that profiles the claim and potential negotiations. The report should include:

a. A listing of all involved parties and their positions.

b. The legal history, if any, of the claim, including such relevant matters as prior or potential litigation or court decisions, or rulings by the Indian Claims Commission.

c. A summary and evaluation of the claims asserted for the Indians.

d. Relevant information on the non-Federal parties and their positions to the claim.

e. A geographical description of the reservation and drainage basin involved, including maps and diagrams.

f. A review and analysis of pertinent existing contracts, statutes, regulations, and legal precedent that may have an impact on the settlement.

g. A description and analysis of the history of the United States' trust activities on the Indian reservation.

4. During Phases I, II, and III, the Government (through the negotiating team or otherwise) will not concede or make representatives on likely U.S. positions or considerations.

Phase II—Assessment and Recommendations

1. As soon as possible, the negotiating team, in concert with Justice, will conduct and present to the Department an assessment of the positions of all parties, and a recommended negotiating position. The purpose of the assessment is to (1) measure all costs presuming no settlement, and (2) measure complete settlement costs to all of the parties. The assessment should include:

a. Costs presuming no settlement—Estimates for quantifying costs associated with all pending or potential litigation in question, including claims against the United States and claims against other non-Federal parties together with an assessment of the risk to all parties from any aspect of the claim and all pending litigation without a settlement. A best/worst/most likely probability analysis of the litigation outcome should be developed.

b. An analysis of the value of the water claim for the Indians.

c. Costs Presuming Settlement—quantification of alternative settlement costs to all parties. This includes an analysis showing how contributions, other than those strictly associated with litigation, could lead to settlement (e.g., facilities to use water, alternative uses of water, and alternative financial considerations).

2. All analysis in the assessment should be presented in present value terms using the planning rate used for evaluating Federal water resource projects.

Phase III—Briefings and Negotiating Position

1. The Working Group on Indian Water Settlements will present to the Secretary a recommended negotiating position. It should contain:

a. The recommended negotiating position and contribution by the Federal Government.

b. A strategy for funding the Federal contribution to the settlement.

c. Any legal or financial views of Justice or OMB.

d. Tentative position on major issues expected to arise.

2. Following the Secretary's approval of the Government's negotiating position, Justice and OMB will be notified before negotiations commence.

Phase IV—Negotiations Towards Settlement

1. OMB and Justice will be updated periodically on the status of negotiations.

2. If the proposed cost to the U.S. of settlement increases beyond the amount decided in Phase III, if the negotiations are going to exceed the estimated time (or break down), or if Interior proposes to make signficiant changes in the Government negotiating position or in the U.S. contribution to the settlement, the original recommendation and negotiating position will be revised using the procedures identified above.

MEMORANDUM

TO: Tara DePuy, Crow Negotiating Chair; Chris Tweeten, Crow Negotiating Team; Sam Rose, Crow Negotiating Team; Toni Hagener, Crow Negotiating Team; Faye Bergan, Susan Cottingham, Bill Greiman
FROM: Joan Specking
RE: History of public involvement and work schedule for Crow negotiations.
DATE: April 2, 1999, revised April 15, 1999

Negotiating Sessions:

May 12, 1993
January 19, 1994
August 3, 1995
January 21, 1999
February 17, 1999
March 11, 1999

January 25, 1994. Memorandum of Understanding (408 Agreement) signed by Crow Tribe and RWRCC.

August 15, 1994. Bibliography of resource materials relating to Crow Reservation received from Dale White's office.

January 23, 1996. Informational mailing and request for addresses for mailing list sent to approximately 575 names from the DNRC water rights data base.

Claims examination - schedule of Judge Loble's judicial orders:
Pryor Creek, Basin 43E - December 4, 1996 and November 2, 1995
Basin 43Q- December 4, 1996 and November 2, 1995
Basins 43O, 43P, 42KJ – August 10, 1998

December 29, 1997 – Land Classification Index detailing soils analysis of the Crow Reservation prepared by RWRCC Soils Scientist Arial Anderson and sent to Art Alden, Crow Tribe Water Resources.

October 23, 1998 – Meeting between the Montana Attorney General's Office and Crow Tribe representatives to discuss multi-tiered settlement proposal.

January 1999 – Crow Tribe's Proposed Comprehensive Settlement with State of Montana and the United States received by Compact Commission.

January 28, 1999 - Faye Bergan and Bill Greiman - meetings with water users in Hardin.

February 22, 1999 – Draft compact posted at Little Big Horn College and Big Horn Conservation District offices for public review.

March 19, 1999 – Notice of Public Meetings mailed to approximately 1000 water rights holders in the area of the Crow Reservation – list created from DNRC water rights data base.

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March 19, 1999 – Advertisement for Public Meetings sent to Big Horn County News for week of March 24, 1999

March 22, 1999 – Draft Compact faxed to Lorna Thackery, Billings Gazette; Art Alden, Crow Water Resources office, (for posting at Indian Health Service and BIA); Hardin County Clerk and Recorder's Office (for posting); Pat Riley, DNRC Water Resources Regional Office, (for posting).

Public Meetings:

March 29, 1999: Crow Agency, 2 p.m.; Billings, 7 p.m.
March 30, 1999: Lodge Grass, 1 p.m.; Hardin, 7 p.m.

Meeting notices and the draft compact were posted on the Commission's web site: www.dnrc.mt.state.us/rwrcc

April 5, 1999 – Bill Greiman and Pat Riley met with Pryor Creek water users in Billings.
April 6, 1999 – Bill Greiman and Pat Riley met with Little Bighorn water users in Hardin
April 10, 1999 – Bill Greiman and Faye Bergan met with water users at Huntley.

April 12, 1999 – Faye Bergan met with water users at Hysham.

Newspaper/Radio/TV coverage:

Billings Gazette: March 12, 1999; February 18, 1999; January 22, 1999; January 21, 1999; April 9, 1999; April 14, 1999

Big Horn County News: February 3, 1999; February 10, 1999; February 24, 1999; March 10, 1999; March 24, 1999; March 31, 1999; April 7, 1999

Independent Record: April 14, 1999
National Public Radio: April 7, 1999; April 13, 14; 1999
TV Channels 8 & 21: April 13, 1999

WALTON RIGHTS: LITTLE LAW AND BIG POLICY

by Susan M. Williams and Jane Marx

1. Walton Rights Derive from the Treaty-Based Water Rights Held by the Tribe and its Indian Allottees; to Analyze Walton Rights, it is Necessary to Understand the Underlying Water Right Held by the Tribe and, Derivatively, Tribal Allottees.

   a. Walton rights, as described by the Ninth Circuit, derive from Indian allottees under the General Allotment Act, 25 U.S.C. §§ 331-34, 339, 341, 342, 348, 349, 354, 381 (1982), who held land title in fee and subsequently sold lawfully those fee lands to non-Indian successors-in-interest. Colville Confederated Tribes v. Walton, 647 F.2d 42, 50 (9th Cir.), cert. denied, 454 U.S. 1092 (1981) ("Walton II").

      i. A non-Indian successor-in-interest acquires: (1) a right to use water being appropriated by the Indian allottee at the time title passes to the non-Indian; and (2) the right, with a date-of-reservation priority date, to water that he or she appropriates with reasonable diligence after the passage of title. The non-Indian successor-in-interest must continuously use the water or lose the right. Walton II, 647 F.2d at 51.

   b. Upon proper proof of a Walton claim and subject to certain conditions, all discussed below, a non-Indian successor-in-interest to an Indian allottee is entitled to use a share of the tribe's treaty priority date water for irrigation purposes. Walton II.

   c. In contrast, non-Indian owners of lands acquired pursuant to federal homestead laws are not entitled to Walton rights because federal homestead laws did not provide for transfer of federal water rights incident to the transfer of land from the public domain into private ownership, and no other federal law requires use of a federal Indian reserved rights to pass to these non-Indian owners of land on a reservation. In re General Adjudication of All Rights to Use Water in Big Horn River System, 899 P.2d 848 (Wyo. 1995). Similarly, non-Indian owners of lands acquired pursuant to treaty assignments to individual Indians should not be entitled to Walton rights.

   d. To examine the Walton line of cases, we must undertake a standard chain of Indian (in this case--water) title analysis to determine the nature of the underlying Indian water right now claimed by the non-Indian and how Congress may have altered that right in favor of the non-Indian.

2. The Tribe Holds Reserved Water Rights in Common for the Benefit of All Tribal Members.

   a. When reservations were established, the United States and the Indians reserved the common right to "sufficient water to fulfill the purposes of the reservation,"

EXHIBIT 6

with a priority date as of the reservation's creation. Winters v. United States, 207 U.S. 564 (1908).

b. Reserved rights "vest" as of the time the Indian reservations were created. Arizona v. California, 373 U.S. 546, 600 (1963).

c. Reserved water rights are not lost through non-use.

d. Treaty rights to land and water are held in common for the benefit of all tribal members. United States v. Jim, 409 U.S. 80, 83 (1972); United States v. Chase, 245 U.S. 89, 99-100 (1917); Grey v. United States, 21 Cl. Ct. 285, 299 (1990), aff'd w/o op., 935 F.2d 281 (1991), cert. denied, 502 U.S. 1057 (1992); see also Northern Paiute Nation v. United States, 8 Cl. Ct. 470, 480-81 (1985).

   i. "Whatever title the Indians have is in the tribe, and not the individuals, although held by the tribe for the common use and equal benefit of all of the members." Jim, 409 U.S. at 82.

e. A tribe's original and vested reserved water right is that amount of water needed for all of the original reservation's lands. Thus, the fact that some of the original tribal lands later were sold to non-Indians does not in and of itself alter the tribes' right to federal water quantified on the basis of these lands. Individual tribal members have a right to share in the use of tribal assets, but do not have individual ownership interests in the property; the vested property right remains with the tribe for the common benefit of all tribal members.

f. Like federal and state water rights in general, tribal water rights are not tied inseparably to tribal lands. California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 158 (1935); Ickes v. Fox, 300 U.S. 82, 95 (1937). Once quantified, *e.g.*, on the basis of the reservation's practicably irrigable acreage or some other method, tribal water rights may be used any way the tribe deems advisable. Arizona v. California, 439 U.S. 419, 421-22 (1979) (Supplemental Decree); see also Memo Sol. Int., Feb. 1, 1964, reprinted in 2 Opinions of the Solicitor of the Dep't of the Interior Relating to Indian Affairs, 1917-74 at 1930 (Wash.: Gov't Printing Office, n.d.); Memorandum from the Solicitor to the Regional Solicitor of the Dep't of the Interior at Los Angeles (January 21, 1971) (restating position).

3. Tribes Retain All Original Rights to Their Reservations Which Have Not Been Extinguished by Congress. United States v. Winans, 198 U.S. 371 (1905); United States ex rel. Ray v. Hibner, 27 F.2d 909, 911 (D. Idaho 1928); Skeem v. United States, 273 F. 93 (9th Cir. 1921).

   a. To extinguish tribal rights, Congress must express its intent to do so clearly and unambiguously. Montana v. Blackfeet Tribe of Indians, 471 U.S. 759 (1985).

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Tribal water rights can only be extinguished or abrogated by "explicit statutory language." County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985).

b. The United States has a trust responsibility to preserve and protect tribes' federal water rights. Fort Mojave Indian Tribe v. United States, 32 Fed.Cl. 29 (1994); White Mountain Apache Tribe v. United States, 11 Cl. Ct. 614 (1987); Northern Paiute Nation v. United States, 8 Cl. Ct. 470 (1985). Accordingly, Congress may not modify tribes' vested water rights lightly.

4. The General Allotment Act, 25 U.S.C. §§ 331-34, 339, 341, 342, 348, 349, 354, 381 (1982), Did Not Extinguish or Abrogate Tribal Water Rights Held in Common For the Benefit of All Tribal Members in Favor of Allottees. Rather, Pursuant to the Act, the Indian Allottee Acquired a Vested Right to Use a Share of the Tribal Water for Irrigation Purposes.

a. The General Allotment Act provided that land on Indian reservations could be allotted for the exclusive use of individual Indians. Although the Act was misguided, the purpose of the Act was to benefit Indians by encouraging them to become self-supporting landowners. After holding allotments in trust for a 25-year period, the federal government could convey the land in fee to the Indian allottee.

i. Upon determining that tribal land could be advantageously used for irrigation or grazing purposes, the federal government could allot tribal acreage to individual Indians.

ii. Consistent with the Act's goals, Congress mandated that sufficient water be made available to Indian allottees to use for irrigation of their allotments. 25 U.S.C. § 381 (1982). Section 381 is the only section in the General Allotment Act that relates to reserved water. Congress intended to provide allottees the right to use water to irrigate:

> In cases where the use of water for irrigation is necessary to render the land within any Indian reservation available for agricultural purposes, the Secretary of the Interior is authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.
> 25 U.S.C. § 381.

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iii. Section 381 does not sever and convey in full a portion of the tribal water right to allottees. Grey, 21 Cl. Ct. 299-300. Rather, the section authorizes the Secretary to ensure that allottees are permitted to use a fair amount of the tribes' reserved water right quantified for irrigation purposes along with other tribal irrigators. Id.

(1) "Nothing in the General Allotment or other statutes governing irrigation of allotments suggests that Congress was partitioning and conveying tribal water rights as it did with tribal lands. Neither the Supreme Court nor the Federal Circuit have presumed a Congressional intent to convey to Indian allottees an appurtenant right to an individual share of their tribe's reserved water." Id.

iv. Indian allottees obtain a vested right to use a portion of the tribe's reserved water for irrigation purposes.

(1) Winters rights can exist only in a coherent system if they are held by the government . . . with title residing in the tribes themselves. Grey, 21 Cl. Ct. at 300.

(2) "Respondents maintained under the Treaty of 1868 waters within the reservation were reserved for the equal benefit of tribal members [citations omitted] and when allotments of land were duly made for exclusive use and thereafter conveyed in fee, the right to use some portion of tribal waters essential for cultivation passed to the owners. The respondents claim to the extent stated is well-founded." United States v. Powers, 305 U.S. 527, 531 (1939) (emphasis added).

(3) "Individual Indian allottees have a right to use a portion of this reserved water." United States v. Adair, 723 F.2d 1394, 1416 (9th Cir. 1983), cert. denied, 467 U.S. 1292 (1984).

(4) "It is settled that Indian allottees have a right to use reserved water." Colville Confederated Tribes v. Walton, 647 F.2d 42, 50 (9th Cir.), cert. denied, 454 U.S. 1092 (1981) ("Walton II").

(5) "A right to use water associated with an allotment created after the establishment and out of a reservation...is therefore appropriately described as 'derivative' of the reservation water right." Memorandum from the Solicitor to the Secretary of the Department of the Interior (March 30, 1995), at n.15.

v. Section 349 of the General Allotment Act, regarding consent to jurisdiction, does not alter the intent of Section 381 that, pursuant to federal law, allottees acquire a right to use water for irrigation purposes.

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(1) Section 349 provides that at the time the allottee acquires title to the land in fee simple, the allottee will be subject to state laws. However, that section has no application to water rights, because water rights were not conveyed with the parcels of land. Instead only one of multiple uses of the tribal water right was conveyed to allottees, namely, the right to use tribal water for irrigation purposes.

5. An Indian Allottee Can Convey to a Non-Indian Successor-in-Interest, If at All, Only What the Allottee Possesses: A Vested and Transferable Right to Use Water for Irrigation.

a. With the sale of property, an Indian allottee can convey a vested right to use reserved water for irrigation purposes. Walton II.

i. Because the General Allotment Act was intended to benefit Indians, an inability to convey use of water would reduce the value of the Indian allottee's land and would therefore be a "diminution of Indian rights that must be supported by a clear inference of Congressional intent." Walton II, 647 F.2d at 50.

ii. Although exhaustive research has not been done, the author's experience is that allotted lands did not in fact benefit from higher priced sales due to the existence of Walton rights.

iii. A good question exists whether the General Allotment Act manifests Congress' required unequivocal abrogation of the tribal right in favor of non-Indians. And as discussed below, certain similarities described in the Walton decision between this presumably federal Walton right and state rights are peculiar in light of no congressional mandate in this area requiring state law to apply to define the water right.

iv. But see In re General Adjudication of All Rights to Use Water in the Big Horn River System, Dist. Ct. Judgment and Decree of July 30, 1992, as partially amended by Order of November 6, 1992. ("Big Horn Judgment and Decree") at 14 and Conclusion of Law, para. 6, in which the District Court stated that although a Walton right arises under federal law, once the right is perfected it becomes a state right subject to state law.

The University of Montana

School of Law
The University of Montana
Missoula, Montana 59812-1071
Phone: (406) 243-4311
FAX: (406) 243-2576

Memo:

To: Angela Russell
From: Ray Cross, UM School of Law RC
Date: May 17, 1999

Re: Proposed Crow Tribe Water Compact

You asked me to assess whether the proposed Crow Tribe Water Compact may adversely affect tribal allottees' reserved water rights within the Crow Reservation. My brief review of this proposed compact on this single issue does raise some concerns. Article III, section A (6), protects state recognized water rights from the current or future use of the compact-acknowledged Crow Tribal Water Right. It does so by rendering any new development of the Crow Tribal Water Right a junior use in relation to water rights recognized under state law with a priority date before this compact is ratified by the Montana legislature. State recognized water rights are broadly defined to include state judicially decreed water rights, permits issued by the DNRC, state water reservations issued by the DNRC or its predecessor agency, statutorily exempt water rights.

Furthermore, the compact's definition of Crow Tribal Water Right "means the right of the Crow Tribe, including any Tribal member to divert, use, or store water as described in Article III of this Compact." This plain language seems to subordinate the federally-reserved water rights of the Crow Tribe, including tribal allottees' reserved rights, to state authorized water uses and rights within the defined water sources affected by this proposed compact. It that is the proposed compact's intent, then tribal allottees are legitimately concerned that their reserved water rights may be legally and practically diminished by this compact.

First, federal judicial decisions have generally accorded tribal allottees a pro-rata share of any tribally reserved water right in a quantity sufficient to make their allotments productive consistent with the purpose of those federal statutes and agreements governing those Indian lands. *See*, F. S. Cohen, *Handbook of Federal Indian Law* 594-5 (1982) Crow tribal allottees would enjoy these same federally reserved water rights that attached to their allotments with a priority date that is typically no later than the date of federal treaty or agreement that established the Crow Reservation. By subordinating the Crow Tribal Water Right to state authorized uses tribal allottees' practical and legal interests may be harmed in these ways:

1. Tribal allotments may be rendered less valuable either in the leasing or sale contexts: Tribal allottees' are empowered by federal law to "pass on" a portion of their reserved water rights, including their treaty-reserved priority date, to non-member lessees or purchasers of their allotments. *See*, F.S. Cohen, *Handbook of Federal Indian Law* 593 (1982) Assuming that the

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An Equal Opportunity University

lease or sale value of such allotments incorporate this right, significant diminution of those rights may lessen the lease or sale value of those tribal allotments.

2. Tribal allottees's future use of their reserved water rights on their allotments may be directly limited by such a subordination if it is determined by proposed Compact Commission that such use would harm state authorized water users that are protected by this compact.

Crow tribal allottees may want to express their concerns about the potential adverse practical and legal effects of this proposed compact on their reserved water rights. They may also want to alert the Bureau of Indian Affairs (BIA) about their concerns and request appropriate action from the federal government as the allottees' trustee.

Please let me know if I can be of further assistance in this matter.

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE BILL EGGERS
HOUSE DISTRICT 6

HELENA ADDRESS:
CAPITOL BUILDING
HELENA, MONTANA 59620-0400
PHONE: (406) 444-4800

HOME ADDRESS:
PO BOX 1000
CROW AGENCY, MONTANA 59022
PHONE: (406) 638-2468

COMMITTEES:
JUDICIARY
AGRICULTURE
NATURAL RESOURCES

Bruce Babbitt
Secretary
U.S. Department of the Interior
MS-4140-MIB
1849 C Street NW
Washington, D.C. 20240

May 21, 1999

Dear Mr. Secretary,

Governor Racicot has called a Special Session of the Montana Legislature on June 16, 1999, to consider the Crow Water Compact. This is a request that you immediately intervene and either persuade the Governor to postpone the session indefinitely or file an action for a temporary restraining order in Federal Court to stop the Special Session.

The Crow Tribe and the State have been on a fast track since October, 1998 to conclude negotiations relating to the Big Horn River and other drainage's on the Crow Reservation. The Crow Allottees have not been represented in any respect during these negotiations. The Tribe's and the State's water rights are mutually exclusive and compete with the Allottee's water rights. Allottees water rights are at risk, subject to extreme diminution and exclusion under the existing Compact.

At formal hearings on May 18, 1999, on the Crow Reservation and in Billings, the State Environmental Quality Council, Legislative Law, Justice and Indian Affairs Committees, and Montana Reserved Water Rights Compact Commission, the latter attended by the Governor and the Attorney General, made a decision to recommend that the Crow Water Compact be presented for Legislative approval at the Special Session.

At the hearing at Crow Agency, I presented a long list of serious concerns that need to be addressed before this fast track Compact is

EXHIBIT E

approved by the State Legislature (see attachment A). These concerns, for the most part, cannot simply be "responded to", as suggested by the Attorney General, because they address the mechanisms, process and substantive terms and conditions comprising the Compact.

As an enrolled Tribal member, a riparian water owner, and a farmer-rancher, I am seriously concerned that I and others here similarly situated, have not been represented by the Bureau of Indian Affairs or the Tribe in these negotiations and that we will be irreparably damaged by the existing Compact (see legal analysis of damages Allottees will suffer by Univ. of Montana law Prof. Cross attached hereto as attachment B). The existing Compact appears to reserve the Tribes 1868 priority date to only surface waters and releases all rights to ground water on the reservation to the State.

I presented to the above panel, in Billings, a Petition, signed by over 200 Crow Allottees who believe that they have not been adequately represented and will suffer irreparable injuries under the existing Compact. Allottees do not want to have to fight all water right disputes with the Tribe, each other, and non-Indian farmer-ranchers in the State Water Court. The lack of finality as to the rights of the parties to the Compact is a glaring error. The failure to address the protection of the fish habitat in the Big Horn River is another major omission.

Allottees believe that they should be able to rely on the Bureau of Indian Affairs to represent them pursuant to its trust responsibility. Time is needed to work out a Compact that will not result in Allotees suing the Federal government for breach of its fiduciary responsibility and or throw all parties to the Compact into court for years to come over issues that should have been and can be resolved at the negotiation stage.

Your immediate help is respectfully requested.

Very truly yours,

Bill Eggers

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JOINT STATEMENT OF

JOSIAH MOORE, CHAIRMAN OF THE

TOHONO O'ODHAM NATION, AND

MARY ANN ANTONE, CHAIRWOMAN OF

THE TOHONO O'ODHAM LEGISLATIVE

COUNCIL, BEFORE THE UNITED STATES

SENATE SELECT COMMITTEE ON

INDIAN AFFAIRS AND HOUSE COMMITTEE

ON INTERIOR AND INSULAR AFFAIRS

ON

S. 3125 AND H.R. 5735

TO AMEND THE SOUTHERN ARIZONA

WATER RIGHTS SETTLEMENT ACT OF 1982

August 6, 1992

EXHIBIT F

III. BACKGROUND AND STATUS OF WATER RIGHTS LITIGATION

Civil litigation was initiated in 1975 by the Tohono O'odham Nation (then known as the Papago Tribe), the United States and two individual allottees against the City of Tucson, the State of Arizona, Farmers Investment Company, ASARCO, Inc. and four other mining companies. The lawsuit (commonly referred to as U.S. v. Tucson) requested a declaration of plaintiffs' rights in the surface water and groundwater of the Upper Santa Cruz Basin,[3] damages for water withdrawals by defendants, and an injunction against surface water diversions and groundwater pumping which interfere with the rights sought to be quantified. Several hundred additional water users in the Basin were later joined as defendants.

It was soon apparent that a resolution of the claims through litigation would involve an extraordinary financial drain over a long period of time, during which the nature and extent of the water rights of the Nation and other parties would remain uncertain. With these considerations in mind, extensive settlement negotiations were conducted by the parties and successfully concluded in 1982. The terms and conditions of that settlement were legislatively confirmed in SAWRSA. The nature and extent of the future water rights of the Nation and allottees were prescribed in SAWRSA, as well as the financial benefits each would receive as compensation for the damages claimed in U.S. v. Tucson.

Since SAWRSA resolved all water rights claims at issue in U.S. v. Tucson, the expectation was that the lawsuit would be dismissed, but, unfortunately, the suit is still active.

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Sen. Natural Res.
EXHIBIT 19
DATE 6/15/99
SB 1

PETITION PROTESTING THE PROPOSED CROW WATER COMPACT

WE, THE UNDERSIGNED LAND OWNERS OF LAND WITHIN THE EXTERIOR BOUNDARIES OF THE CROW RESERVATION OBJECT TO THE PROPOSED CROW WATER COMPACT WITH THE STATE OF MONTANA IN ITS PRESENT FORM, THAT THE EXISTING COMPACT NOT BE PRESENTED TO A SPECIAL SESSION OF THE STATE LEGISLATURE ON JUNE 16TH, AND WE INSIST THAT NEGOTIATIONS CONTINUE, IN ORDER TO REACH A SETTLEMENT WITH TERMS THAT ARE FAIR AND EQUITABLE TO ALL CONCERNED, FOR THE FOLLOWING REASONS:

A) Forfeiture of our first nation senior water right dated 1851 or 1868 IS WRONG;

B) Forfeiture of thousands of acre feet of water behind the Yellowtail Dam IS WRONG;

C) No monetary compensation by the State to the Tribe for water rights forfeited by the tribe IS WRONG (the state will pay the Tribe $15 million only to settle the Crow Coal Severance Tax Claim that is worth $56-350 million);

D) There is no existing Crow Water Code. THIS IS WRONG. A Crow Water Code should be prepared and approved before the Water Compact is adopted.

E) The Water Compact will give non-Indian landowners who are Section 2 violators Crow water rights free, without condition against transfer. THIS IS WRONG.

F) All disputes between the Indian land owners and non Indians will have to be ~~have to be~~ decided by the State Water Court. THIS IS WRONG

G) The Montana/Wyoming Water Compact relating to the water behind Yellowtail Dam is not binding on the Crow Tribe. The existing water compact tries to wrongfully include the Tribe in that compact to limit the Tribes absolute and unlimited water right to the ~~water~~ in the reservoir. THIS IS WRONG.

[illegible]	Emeri A Hogan Real
Herbert S. White	Matthew Real
Travis Reed	Carrie Morning
[illegible]	Charlotte Medicine Tail
[illegible]	Geo Medicine Horse III
[illegible]	Lloyd A Real Bird
[illegible]	[illegible]
[illegible]	Ryan H. Real Bird
Thomas Open	Claire Real Bird
[illegible]	Henry Big Hawk
Dino Hogan	Daniel Buquard
Jennifer Ann Shane	Wanda Medicine Horse
John P. Yellow Mule	Jaylene J. Alden
Karen Falls Down	Dance C. Hogan
Mary Kemp	Mary Ruth Hammett
Jess Real Bird	
Robert Bird Jr	
Sheldon Voyle	
Leisle Saltcedar	
Gladys Yarlett	

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1. Alyce Marie Spotted Horse
2. Beatrice Stacy Rasmussen
3. Janine Peare Pretty On Top
4. Wayne K Walters
5. Angela Walters
6. Cynthia J Alden
7. Dawn Real Bird
8. Gwendolyn O'Brien
9. Dawn Fire Stevens
10. Kathleen Fox Hogan
11. Marvel Old Dog
12. Julane Old Elk
13. Alden Old Elk
14. Ethel Not Afraid
15. Leslie M. Old Elk
16. Nelson Real Bird
17. Christine Real Bird
18. Arlene Stewart
19. Harold Old Bull
20. Ramona M Pretty On Top
21. Donna Stevens Pretty On Top
22. Rachel D. Hogan Head
23. Cecelia Dale Rock Above
24. Elmer E Pease
25. John L Pretty On Top
26. Bonnie Stevens
27. Jamison Stevens
28. Andrea Jean Real Bird
29. Agnes Left Hand Over
30. Ralph Yellowtail
31. Merle Medicine Crow
32. Clifford Benjamin Hogan Jr.
33. Wilson R. Pease
34. Jeffrey Medicine Horse
35. Richard Chandler
36. Dallas Real Bird
37. Lenora Pease

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~~Kenneth Knows Ground~~	~~Tyson Plenty Feather~~
~~Ralph K. Olson Jr.~~	~~Isaac Knows Ground~~
~~[illegible]~~	Mary Agnes Stone
Darlene Little Owl	
~~Joe Plenty Feather~~	
~~Robert Bull~~	
~~Willa Plenty Feather~~	
Lawrence Big Man Sr.	
~~[illegible]~~	
Anthony Davis	
Rose Ann Reed	
Claudia James	
Alora Big man	
Ernestine Deputy Gardner	
Jaime M. Pretty On Top	
Colleen Conture	
Annette Conture	
Linda Crooked Arm	
Rhoda Conture	
Patricia Claus	
Shirley K. Miller	

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Clint Real Bird	
Rod Real Bird	
Cora Real Bird	
Victor Bull Horse	
Carson Dean Bull Horse	
Jolene Costa	
Valerie Lares	
Angela Lares	
Jessie Lares	
Leland W. Stewart	
Linda Buttail	
Angela M. Stewart	
Benedict Buttail	
Gilbert Frugé	
Frances Higgins	
Raylene Rides Horse	
Mary A. Rides Horse	

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Alonzo Fisher Horse	
Art Fitzpatrick	
Jimmie Pease	
Ralph Clayton	
Leon Dion Pickingbear	
Bertha Deputy	

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Virginia Wayland	
Caroline Hanson	
Dan Old Elk	

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B) Forfeiture of thousands of acre feet of water behind the Yellowtail Dam IS WRONG;

C) No monetary compensation by the State to the Tribe for water rights forfeited by the tribe IS WRONG (the state will pay the Tribe $15 million only to settle the Crow Coal Severance Tax Claim that is worth $56-350 million);

D) There is no existing Crow Water Code. THIS IS WRONG. A Crow Water Code should be prepared and approved before the Water Compact is adopted.

E) The Water Compact will give non-Indian landowners who are Section 2 violators Crow water rights free, without condition against transfer. THIS IS WRONG.

F) All disputes between the Indian land owners and non Indians will have to be ~~have to be~~ decided by the State Water Court. THIS IS WRONG

G) The Montana/Wyoming Water Compact relating to the water behind Yellowtail Dam is not binding on the Crow Tribe. The existing water compact tries to wrongfully include the Tribe in that compact to limit the Tribes absolute and unlimited water right to the ~~water~~ in the reservoir. THIS IS WRONG.

Patricia Dust	
Lorette Little Light	
Jarrett Medicine Crow	
Mike Nolan Stewart	
Wayne Little Light	
Colette Little Light	
Dennis Big3	
Ellen Knapstumup	

PETITION PROTESTING THE PROPOSED CROW WATER COMPACT

WE, THE UNDERSIGNED LAND OWNERS OF LAND WITHIN THE EXTERIOR BOUNDARIES OF THE CROW RESERVATION OBJECT TO THE PROPOSED CROW WATER COMPACT WITH THE STATE OF MONTANA IN ITS PRESENT FORM, THAT THE EXISTING COMPACT NOT BE PRESENTED TO A SPECIAL SESSION OF THE STATE LEGISLATURE ON JUNE 16TH, AND WE INSIST THAT NEGOTIATIONS CONTINUE, IN ORDER TO REACH A SETTLEMENT WITH TERMS THAT ARE FAIR AND EQUITABLE TO ALL CONCERNED, FOR THE FOLLOWING REASONS:

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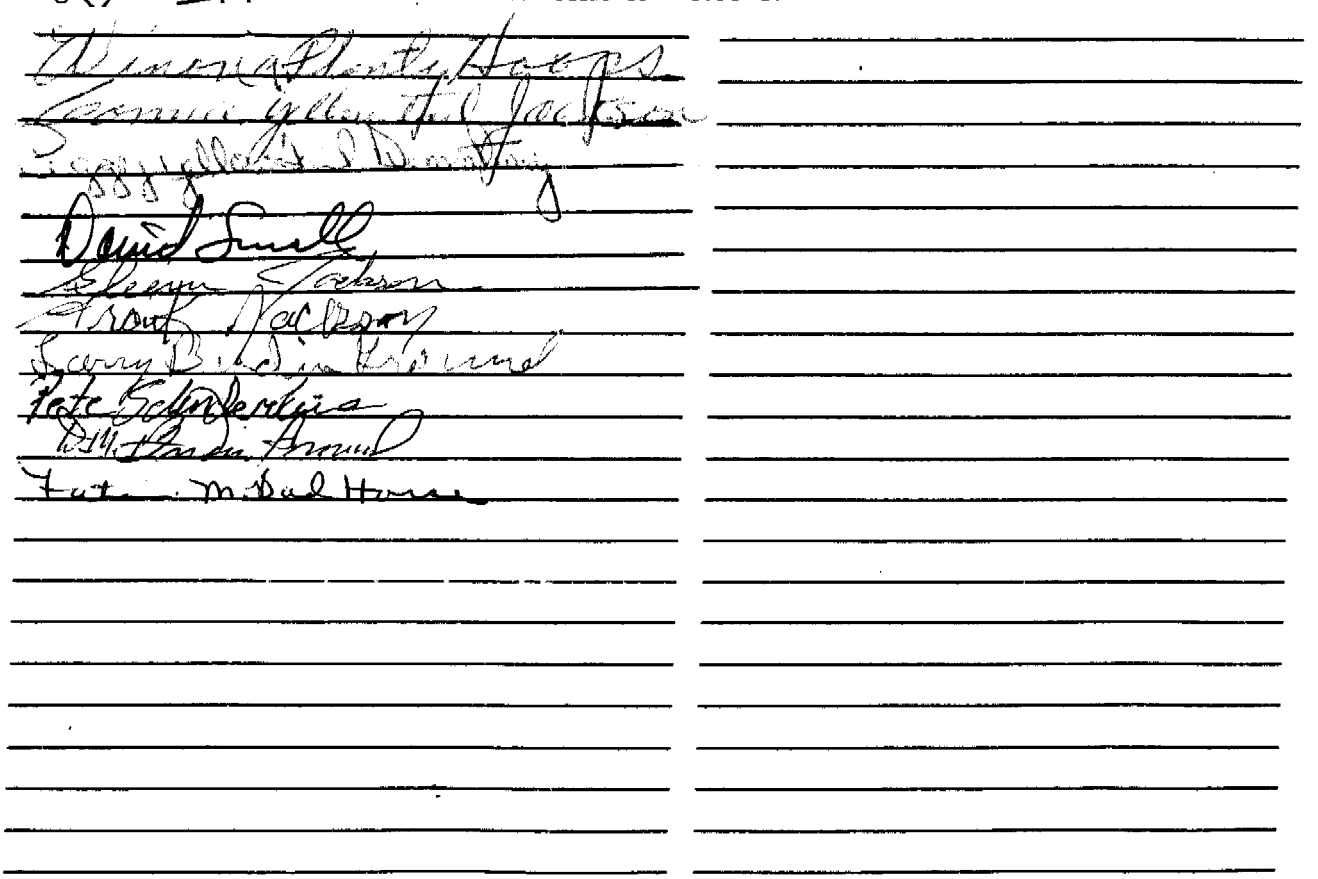

17

PETITION PROTESTING THE PROPOSED CROW WATER COMPACT

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38. Scott Jackson	

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EX 20

Sen. Natural Res.
EXHIBIT 20
DATE 6/15/99
SB 1

CROW INDIAN LANDOWNERS ASSOCIATION
BOX 173
CROW AGENCY, MT., 59022
June 15, 1999

Chair Bill Crismore and Members
Senate Natural Resources Committee
State Capitol
Helena, Mt. 59620

Re: Crow Water Compact

Dear Chair Crismore and Members:

As Crow Indian landowners, we have raised questions regarding Indian allottees water rights at the local hearings on the Crow Water Compact. These questions have not been answered to our satisfaction and we herein raise them again.

When our reservations were allotted under the General Allottment Act in 1887, our ancestors and their decendants became owners of property whose title is held by the U.S. Government. As property owners (aka allottees), we believe we have certain rights and protections, including Constitutional protection under the Fifth Amendment that prohibits taking of property without just compensation.

According to a 1995 Interior Solicitor's Opinion, John Leshy, he states that the "rights and authority held by allottees and tribes with respect to federal Indian reserved water is a complex area of law." He further states, "agricultural allottees have rights tribes cannot wholly defeat" while allottees are not immune from the "tribes regulatory authority over reservation water use".

Throughout this process of negotiation between the state and the Tribe, allottees have not been represented. We believe the Federal Government, as trustee of our allotted lands, has not only a responsibility but an obligation to provide separate monies for allottees' legal representation. Loss of water rights to the allottees is a loss of value to our lands under the Winters Doctrine of 1908. We believe this is a breach of trust responsibility by the Federal Government and thus a challengeable legal issue to this Compact.

Following the last hearing in Crow Agency on May 18, our landowners association confirmed a meeting with the Bureau of Indian Affairs to further discuss this important issue. At a confirmed meeting date set, neither Deputy Director Mr. Bill Benjamin or Mr. Doug Davis of the Water Resources Department came with no follow-up explanation. We further voiced this concern in

news articles to the Billings Gazette which were never carried.

We have expressed concern that our tribe does not have a Water Code in place. This places landowners in an even more precarious position as there is no regulatory authority for water usage on the reservation.

We recognize that you will no doubt pass this Water Compact today but we cannot stand by while our rights as allottees are overlooked.

Sincerely yours,

Mike Not Afraid, President

Larney Little Owl, Vice President

EX 21

Sen. Natural Res.
EXHIBIT 21
DATE 6/15/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Senator Ric Holden

For the Senate Natural Resources Committee

Prepared by Gregory Petesch
June 15, 1999 (9:59AM)

1. Page 6, lines 29 and 30.
Following: "IV" on line 29
Strike: remainder of line 29 through "IV" on line 30

2. Page 21, lines 1 and 2.
Following: "Reservation" on line 1
Strike: remainder of line 1 through "IV" on line 2

3. Page 31, line 13 through page 32, line 10.
Strike: subsection c. in its entirety

- END -

22

Sen. Natural Res
EXHIBIT 22
DATE 6/15/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Senator Ric Holden

For the Senate Natural Resources Committee

Prepared by Gregory Petesch
June 15, 1999 (10:10AM)

1. Page 9, line 8.
Following: "."
Insert: "The streamflow and lake level management plan must be submitted to and approved by the Montana legislature before the Compact is submitted to Congress."

2. Page 9, line 12.
Following: "State"
Insert: "if the change is consistent with the plan approved by the Montana legislature."

3. Page 42, line 10.
Following: "State"
Insert: "after approval by the Montana legislature"

- END -

Sen. Natural Res.
EXHIBIT 23
DATE 6/15/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Senator Ric Holden

For the Senate Natural Resources Committee

Prepared by Gregory Petesch
June 15, 1999 (10:16AM)

1. Page 9, line 4.
Following: "**Plan.**"
Insert: "a."

2. Page 9, line 13.
Following: line 12
Insert: "b. A flood management plan must be drafted and submitted to the Montana legislature for approval prior to submitting this Compact to Congress for approval."

- END -

24

Sen. Natural Res.
EXHIBIT 24
DATE 6/15/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Senator Ric Holden

For the Senate Natural Resources Committee

Prepared by Gregory Petesch
June 15, 1999 (10:15AM)

1. Page 20, line 25.
Strike: "including"
Insert: "except"

2. Page 20, line 27.
Strike: "including"
Insert: "except"

- END -

25

Sen. Natural Res.
EXHIBIT 25
DATE 6/15/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Senator Ric Holden

For the Senate Natural Resources Committee

Prepared by Gregory Petesch
June 15, 1999 (10:25AM)

1. Page 23, lines 25 and 26.
Following: "Reservation" on line 25
Strike: ","
Insert: "and"
Following: "Strip" on line 25
Strike: remainder of line 25 through "Reservation" on line 26

- END -

Sen. Natural Res.
EXHIBIT 26
DATE 6/15/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Senator Ric Holden

For the Senate Natural Resources Committee

Prepared by Gregory Petesch
June 15, 1999 (10:34AM)

1. Page 7, line 14.
Following: line 13
Insert: "c. The Tribe shall pay its proportional share of the maintenance costs of Yellowtail Dam in accordance with the Tribe's storage capacity."

- END -

Sen. Natural Res
EXHIBIT 27
DATE 6/15/99
SB 1

Testimony by the United States before the Montana State Legislature on the Proposed Water Rights Compact Between the State of Montana and the Crow Tribe

My name is John Chaffin. I am an attorney with the Department of the Interior, Field Solicitor's Office located in Billings, and I serve as a member of the United States' Federal Negotiating Team for the Crow Tribe's water rights. I am here today on behalf of the Chairman of the United States Federal Negotiating Team for the Crow Tribe, Mr. William Benjamin. Mr. Benjamin was involved in an accident on a ranch and is recuperating in the hospital in Havre. On behalf of the United States and the Federal Team, I would like to thank the members of this Committee for giving us the opportunity to comment on the proposed water rights compact between the State of Montana and the Crow Tribe. We trust that our comments will assist the members of this Committee and the Montana State Legislature as it considers taking action on the proposed compact.

I also would like to commend the members of the Montana Reserved Water Rights Compact Commission and its staff, and the members of the Crow Tribal Negotiating Team and its staff, for the significant effort and resources brought to bear in the negotiations of the proposed Compact. That such remarkable progress on a proposed Compact was made in such a short period of time is in no small way attributable to the strenuous efforts of the Commission and the Tribal Team.

At the outset I want to emphasize that the United States has supported, and continues to support, the general goals identified by the State and the Tribe during the course of the negotiation process. Further, we appreciate the State's and Tribe's efforts toward attaining those goals which have included an extensive dialogue with the Federal Team on issues related to resolution of the Tribe's water rights claims.

Nonetheless, the active participation of the Federal Team in the settlement negotiations should not be interpreted as a commitment by the United States to support the Compact in its present form. Unfortunately, the United States continues to have a number of substantive concerns about the proposed Compact itself, and about the "global settlement" framework within which the Compact is supposed to function. These concerns prevent us at this time from being able to support ratification by the Montana State Legislature or from seeking the required approval by the United States Congress. The Federal Team has made every effort in good faith to identify our concerns to the State and the Tribe. I would like to briefly describe our concerns again for the benefit of the State Legislature.

First, regarding the substantive provisions of the Compact itself, the United States is concerned that the accelerated pace at which the proposed Compact was negotiated simply has not allowed sufficient time to fully and adequately consider all of the substantive issues arising from the Tribe's water rights claims. These concerns, which we already have flagged for the State and Tribal negotiation teams, must be adequately addressed before the United States can lend its support to the Compact. Attached to my testimony today is a list of our substantive concerns and of our proposed amendments which address those concerns. We are hopeful that the Montana State Legislature will take these proposed amendments to the Compact under advisement as it debates the proposed Compact.

Second, the United States is troubled that the accelerated pace with which the proposed Compact negotiations were conducted did not provide sufficient time to resolve fully all of the concerns of some agencies within the Department of the Interior. For example, the Bureau of Reclamation has indicated that it has some concerns regarding Big Horn Lake water availability, Pick-Sloan repayment, environmental compliance issues, and the potential impacts of the proposed Compact upon public power users. To satisfy these concerns, the Bureau needs several months to complete and assess technical studies related to these issues. We understand that the

Western Area Power Administration, U.S. Department of Energy, shares these concerns as well, especially with regard to power production, Pick-Sloan repayment, and impacts upon public power users. While some of these issues relate to the federal contribution to the Compact, they are real concerns and should be addressed prior to this legislature ratifying the Compact. Additionally, the National Park Service has indicated that it is concerned about potential impacts of the proposed Compact upon water availability and fish, wildlife and recreation in the Big Horn Canyon National Recreation Area. While the United States does not expect these concerns to seriously jeopardize the water-related elements of the proposed Compact, the United States is committed to ensuring that the potential impacts of the proposed Compact are fully understood prior to the United States supporting it.

Finally, and most important, the parties have not adequately addressed several very important issues directly related to the explicit agreement that the Compact should fit within a broader, "global settlement" not only of the Tribe's water claims, but also of its claims against the United States related to violations of Section 2 of the Crow Allotment Act, ch. 224, 41 Stat. 751 (1920), and of the Tribe's severance tax claims against the State. While the United States generally supports of the global settlement approach, we believe that the financial obligations and contributions of all parties to a Crow global settlement, including the United States, must be expressly delineated prior to agreement and ratification of individual elements (including the Water Compact) of the settlement by any of the parties. At this time, relatively little consideration has been given to the financial contributions that the United States will make toward a settlement of the Tribe's water rights and Section 2 claims. Indeed, on March 30, 1998, the United States appointed a federal negotiation team that has only just begun to explore the possibilities of a settlement of the Section 2 issues with the Tribe. Any expectation of a significant federal contribution to the global settlement cannot be justified at this time without further resolution of the Tribe's water rights, severance tax and Section 2 claims.

Similarly, the United States is concerned that the State contribution delineated in the proposed legislation is much too low, particularly when viewed in light of the expectation of substantial federal contribution identified in the Tribe's initial proposal and in light of the substantial benefits that will be realized by the State and other non-Indians in the Big Horn River and Yellowstone River basins. We note that the Criteria and Procedures for Indian Water Rights Settlements, 55 Fed. Reg. 9223, specifically requires that settlements "should include non-Federal cost-sharing proportionate to the benefits received by the non-Federal parties." In this case, the non-Federal parties stand to gain significant benefits, such as the protection of existing non-Indian water uses and the protection of recreational and economic interests associated with Big Horn River flows. In sum, the United States can support neither a water rights settlement wherein the non-federal contribution is particularly low nor a settlement wherein the expected federal contribution remains indeterminate.

Of all our listed concerns, the major issue is The Streamflow and Lake Level Management Plan. The proposed compact provides for further negotiations within a year after ratification by the Legislature. The United States is concerned that negotiating the terms of the Management Plan within the context of a ratified compact will place undue and unfair limitations on what can be negotiated. Additionally, the United States continues to be concerned that the proposed language on a portion of the Bighorn Lake Storage places an improper emphasis on specific uses and that the language quantifying the water right for the Ceded Strip is inappropriate as a matter of form and content. While the United States cannot support the ratification at this time, we are hopeful that the concerns of the United States can be met in the near future and the United States will be able to offer its support for a full and final settlement of the Crow Tribe's federally reserved Indian water rights claims within the State of Montana. Let me again sincerely thank the members of this Committee for allowing us the opportunity to comment on the proposed Crow Water Rights Compact.

1. Use of storage from Bighorn Lake Page 7 of Legislative Council 0001.1
Article III.A.1.b.(1).(b).

The United States believes that the parties agreed that the 300,000 Acre Feet per Year (AFY) allocation from Bighorn Lake would be divided into two parts. The first 150,000 AFY can be used in addition to the Natural Flow right. The second 150,000 AFY, when available, would be used as a supplement to the natural flow. The United States has argued that the language for the second 150,000 AFY has not been clear and was subject to interpretations. After the public meetings in May, changes were made that have improved the clarity of this provision. We continue to be concerned about clarity, especially because of the provision in subpart (i) that refers to the streamflow and lake level management plan. Reference is already made to the plan in subpart (1) and thus a second reference to the plan in (i) causes a concern that a priority is being expected for the at least the status quo.

2. Streamflow and Lake Level Management Plan Page 9 of Legislative Council 0001.1
Article III.A.7

The United States believes that deferral of an agreement on the Streamflow and Lake Level Management Plan until after the ratification of the Compact by the Montana Legislature is a mistake. The primary source of water for development on the Crow Reservation is the Bighorn River. Because of Compact provisions concerning existing use on the Little Bighorn River and Pryor Creek, the Natural Flow right in the Bighorn River and the storage allocation from Bighorn Lake provide the only consistent water source for new development in any water basin within the Reservation. Fishery and recreation interests within the State government and special interest groups in the private sector have made statements that can be interpreted as expecting, even demanding, that consumptive water developments are to be subordinated to optimal instream flows for the fishery. The United States believes that the Tribe's right to water use must be first recognized and then the Tribe can exercise its governmental discretion on how to use the right.

As the parties negotiate the Management Plan, pressure will be brought to bear to maintain the status quo and leave the water in the stream. In the give and take of negotiating this issue, the parties need to have all resources available to offer. If the Compact is ratified by the legislature, the State will lose flexibility for negotiation. The United States is concerned that a regular response of the State will be that it cannot consider an option because it is covered by a provision in the ratified compact.

3. Ceded Strip Page 20 of Legislative Council 0001.1
Article III.F.

The United States has argued that to be consistent with the provisions of 85-2-234 (MCA 1999), (final decree for the general stream adjudication), the Compact must address, in one place, all water use within a particular basin. The Commission staff believes that it is proper to separate out the water rights for the Ceded Strip from the water rights in the other basins on the Crow Reservation. The Compact provides a separate section on the Ceded Strip, which contains several basins. We acknowledge that the Ceded Strip provision does identify all the parts to a

water right as required by the above cited statute. Time will tell as to whether water users and administrators understand how to read the Compact or are confused and whether the Montana Water Court will accept this substantive modification.

The United States believes it is important to point out one other concern related to the Ceded Strip provision. The Montana Code at 85-2-234(6)(e) and (g) requires that a final decree contain specific provisions that identify "the place of use and a description of the land, if any, to which the right is appurtenant" and "the place and means of diversion." We believe that the inclusion of limits on the place of use in provisions relating to "Place and Means of Diversion" is inappropriate as a matter of form and content. In addition, such an inclusion creates an irreconcilable ambiguity and conflict with the Ceded Strip provisions in Article III.F.. We request that the language "for use within the Reservation" be deleted from subsection 4 in Sections III.A., C., D., and E., and "for use within the Reservation or in connection with Tribal Interests in the Ceded Strip subject to the terms and conditions in Section F., of Article III and Section C.2.b., of Article IV" from subsection 4 of Section III.B. Finally, there is no separate provision addressing place of use, as there is in subpart F.1.b. of Article III, discussing the Ceded Strip.

In addition, the restrictions of water use to "within the reservation" in all the places of use in subsections 5 of Sections III.A., B., C., D., and E., without including "and the Ceded Strip as provided in Section F of Article III" also create an ambiguity and a conflict with the Ceded Strip provisions. We note that subsection 5 in all the Sections noted above is entitled "Purpose." According to 85-2-234(d) and (e), purpose and place of use should be addressed separately.

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Sen. Natural Res.
EXHIBIT 28
DATE 1/15/99
SB 1

MEMORANDUM

TO: Chris Tweeten, RWRCC Chair; Tara DePuy, RWRCC Crow Negotiating Team Chair; Sam Rose, RWRCC Crow Negotiating Team; Toni Hagener, RWRCC Crow Negotiating Team; Susan Cottingham, RWRCC Staff Director; Faye Bergan; RWRCC Crow Team Legal Counsel; Bill Greiman, RWRCC Agricultural Engineer and Team Leader.
FROM: Joan Specking, RWRCC Co-Team Leader
DATE: May 21, 1999
RE: Summary of Minutes from May 18, 1999 Crow Public Meeting, 1 p.m., Multi-Purpose Building, Crow Agency, Montana
Present: See sign-in sheet and below.
Chairman: Senator Lorents Grosfield

0090 Crow Tribal Chair Clara Nomee, welcome, with prayer by Caroline Morrison-Miller.
0162 Clara Nomee turned the meeting over to Senator Lorents Grosfield who explained that the legislative subcommittee of the Environmental Quality Committee, the Law, Justice and Indian Affairs Committee, and the Reserved Water Rights Compact Commission members were there to hear more public input on the proposed Crow Water Compact. Legislators and Commission members introduced themselves:

Jim Shockley, Victor, HD 61; Dan McGee, Yellowstone County, HD 21; Gail Gutsche, Missoula, HD 66; Paul Clark, Thompson Falls, HD 72; Cindy Younkin, Southeastern Gallatin County, HD 28; Jay Stovall, HD 16; Kim Gillan, HD 11; Mack Cole, SD 4; Sam Rose, Choteau, HD 87; John Bohlenger, SD 7; Linda Nelson, SD 49; Tom Ebzery, Billings, citizen representative on EQC; Carol Juneau, HD 85; Gary Matthews, Miles City, HD 4; Monica Lindeen, Hysham, HD 7; Spook Stang, Missoula to Idaho border, SD 36; Duane Grimes, Jefferson, Broadwater, SD 20; Faye Bergan, Legal Council, Compact Commission; Susan Cottingham, Staff Director, Compact Commission; Chris Tweeten, Chairman, Compact Commission; Tara DePuy, Compact Commission; Toni Hagener, Compact Commission; Dennis Big Hair, Secretary, Crow Tribal Counsel; Clara Nomee, Crow Tribal Chair; Bill Benjamin, Deputy Area Director, BIA, Billings; Chair of U.S. Crow Negotiating Team; John Chaffin, Attorney, Dept of Interior Solicitor's Office, member U.S. Crow Negotiating Team; Tom Bellinger, BOR, Denver, member U.S. Crow Negotiating Team; Bob Pelcyger, Tribal Attorney, Crow Negotiating Team; Bob Kelly, Crow Tribe, Crow Negotiating Team; Art Alden, Water Resources, Crow Negotiating Team.

Senator Grosfield explained that although this was a public meeting and an official legislative meeting, it was not to be conducted like a legislative hearing, but was being recorded and would be added to the legislative record if a special session was called. He said the meeting was intended as a briefing for the legislators and public in attendance about the proposed Crow Water Compact, and that there would probably be a special session of the Montana legislature in June to deal with the issue. He asked that brief comments be addressed to the topic during the public comment period of the meeting. Copies of the proposed bill and the accompanying financial bill were available at the meeting.

OPENING REMARKS

0560. Chris Tweeten, Chair, Reserved Water Rights Compact Commission.

Mr. Tweeten asked people to sign the circulating sign-in sheet if they wished to be on the Commission's mailing list. He said the work done by all the parties involved in negotiating the proposed compact was a step forward in the relations between the Tribe and its members and others in the area, and thanked people for attending.

0680. Bob Kelly, Negotiating Team Member, Crow Tribe.
Mr. Kelly welcomed everyone to the public meeting. He said they are looking ahead to when the Crow Tribe has the final ratification vote on the proposed Compact by secret ballot. He pointed out that nothing in the proposed compact involves Section II of the 1920 Allotment Act other than the mention that it will be negotiated, and that nothing in the compact involves a federal contribution to the settlement. He asked that people stick to talking about water rights between the State of Montana and the Crow Tribe and said the Committee was anxious to hear public comments.

0765. Mr. William Benjamin, Chair, Federal Negotiating Team. See written statement.

Willie Day, former Compact Commission member in the 1970s, made a statement giving some background on the creation of the Commission, of which he was one of the first members. (Cannot hear on tape.)

SUMMARY OF SETTLEMENT

1357. Faye Bergan, Commission legal counsel, outlined the specifics of the proposed Crow Water Compact.

PROCESS FOR RESOLVING REMAINING ISSUES INCLUDING "SECTION II", APPROVALS AND TIMELINE.

1950. Mr. Tweeten explained that the compact is part of a package involving disputes that have been ongoing between the state and the Crow Tribe and the United States and the Crow Tribe for some time. In addition to settling the Tribes' federal reserved water rights claims it is anticipated that as a result of the settlement, the State of Montana is going to make payments to the Crow Tribe for the next 10 years and that the money, in addition to serving as the states' cost share for purposes of the water rights settlement, will also serve as consideration for the Tribe to release remaining claims against the state based on the coal severance tax issue. In addition, there remains to be negotiated a settlement between the Tribe and the United States of Tribal claims existing against the United States on Section II, the Crow Allotment Act of 1920. He noted this was an opportunity to bring resolution to all of these long-standing issues in a package.

2270. Senator Grosfield asked those who planned on attending a special session in Helena to raise their hands so the Committees could get a count of how many to expect. Fifty-five to 60 people raised their hands.

PUBLIC COMMENT

2360. Rep. Bill Eggers, HD 6, Opponent:
See written statement.

3514. Mr. Arlo Dawes, advisor to Madam Chair, Proponent:

Welcomed everyone. Mr. Dawes said that although he respects Representative Eggers comments, he does not speak for the Crow Tribal Council. Mr. Dawes said the parties were there negotiating because of McCarren Amendment requirements and that the Crow Tribe supports the proposed compact. He noted this is the first step in a long process of negotiations, which hopefully will result in solving the water rights, severance tax and Section II issues. The draft legislation will settle the path of litigation between the State of Montana and the Crow Tribe and give assurance to the Crow Nation that there will not be dual taxation on any future production of Crow coal. He explained that this is especially important as the Crow Nation seeks to develop its vast resources of coal. Unemployment on the Crow Reservation is in excess of 50%. The severance tax revenue will help the Crow Tribe deal with problems resulting from that high unemployment. He said among the Crow people, just like any other government, there will be dissidence and opposition. But, he said, it is the will of the many that will dictate the future and the process which a society has to take. He said 75 -80% of the voting population on the Reservation supports the compact.

4030. Tyrone Ten Bear, staff assistant to Madam Chair, Proponent:
Welcomed everyone to Crow Agency. He said he wanted to point out one thing about the Crow Tribe - they never took up arms against the United States government. The Crow Tribe has been a friend of the non-Indian and they try to get along with everybody. He pointed out that the Crow Tribe does not want to litigate any more major issues as it costs money for the Tribe. He said one of the key things in this package is the water compact and it's a workable situation where they can sit down and negotiate for the best of all parties. One of the realities he wanted to point out is that he represents a majority of the Crow people as staff assistant to Clara Nomee. He said Mr. Eggers represents few people on the Reservation, and others against the compact are the minority of the Crow Tribe. He asked the legislators to remember that and said if there was a referendum vote the compact would pass.

4034. Alex LaForge, Opponent.
Thanked the committee for the opportunity to address them. He said if this was the Tribal Council he would not have that opportunity. He said the parties are going at the water compact backwards. He said the Crow Tribe is protecting the states' rights and the Wyoming state rights...and what is left would be 4-5% of the river flow. He said he would rather litigate, but he would get rid of the Tribal attorney first. He said they are protecting everybody's rights except the Crow Tribes'. He said he would take 100% of the Bighorn River, the Little Horn River and 50% of the Yellowstone River and that this compact is not a negotiation but a surrender of Crow rights to the state and that the bill would not pass through a special session the way it is written.

. _____Bulltail, Opponent.
He said Madam Chair lies to the people she represents and that there are certain issues that need to be addressed before they go further with the water compact, such as the 107th settlement. He said the Crow Tribe should take the leadership in this and have their own government, and this calls for a Crow Tribal constitution convention before they go further because there is no equal representation on the Crow Tribal Reservation. He asked why they are trying to get this thing through so fast.

4692. Shawn Real Bird, Opponent.
Mr. Real Bird spoke first at length in the Crow language. Following his speech in Crow, he addressed the legislators in English. He said he is one of the members of

one of the largest factions on the Crow Indian Reservation. He said enrolled members own the water guaranteed by the treaties and that the Crows should be made millionaires. He said as enrolled members their goal is to protect and serve the survival of the Crow Nation into the 21st century and the next 100 years but today they are limiting all their rights. He talked about the major Crow treaties establishing the boundaries of the Crow Reservation as the law of the land. Regarding issues in the proposed compact, he said his faction asserts that the elements represent a departure from the treaties, etc. He said the elements represent an issue of such magnitude that they require separate identification and legal analysis by attorneys, water rights experts and Indian tax law experts. He said the Crow proposal represents a wholesale dispersal of the Crow water rights, tax rights and other resources and that the current proposal should be reviewed by the national Indian organizations, National Congress of American Indians and Native American Rights Fund. He said future generations will be impacted, therefore they should be consulted in advance of any future decisions regarding this proposal, and that members of the Crow Nation must fully understand the ramifications of losing all their sovereign rights.

5244. Art Alden, Crow Tribe negotiating team, Director Crow Tribal Water Resources, Proponent.
Following a statement in the Crow language, he said he supports the negotiation. He explained that the allocation they will get from the Yellowtail Dam is 300,000 acre-feet and he thinks that is a water right that the Tribe can live with. He also said that with the Crow Tribal treaty they are entitled to an amount of water, and based on the treaty he knows it is impossible to claim all of the water. He explained that there is protection for current users of the water on Pryor Creek and the Little Horn, along the Bighorn and the irrigation projects, for both Tribal and non-Tribal users and he thinks it is fair. He knows the part regarding Tribal future development is difficult, but the package as a whole is fair, depending on what they get from the federal government.

5792. Kevin Old Coyote, landowner, Opponent.
He said he is against the current proposed water compact between the Crow Tribe, the State of Montana and the federal government. He said the treaties of 1851 and 1868 give the Crow Tribal members inherent rights and he does not want to sell his rights for any given amount of money. He said he does not want to relinquish his prior rights for junior rights nor does he want to relinquish his sovereign immunity as it is in the compact. He said the federal government should live up to its trust responsibilities to the land, other natural resources and tribal members.

5854. Ernie Robinson, Northern Cheyenne Tribal Council.
See written statement.

6131. Eloise Whitebear Pease, Proponent.
She apologized that people attending had to see how elections are conducted and said today turned out to be a good day to get up and campaign for the coming election. She also apologized for some of the things said against the Tribal chair, Clara Nomee. As far as the 107th meridian is concerned, she said no deal is ever perfect but people can see some of the benefits from that settlement, including the rest home, and the nice Tribal buildings. Now the Crow are faced with the water compact and nothing will ever be perfect. She said there will always be some people who will be against this and she doesn't doubt that as negotiations continue some of the problems could be ironed out. She thinks that historically it is wonderful if the Crow Tribe can join with the State of Montana, rather than always battling with somebody, for the benefit of all

of the people. She said some years ago she wrote to the Hardin paper regarding Section II, saying the people who bought the land in good faith and were issued a deed from the U.S. government, and the Crow people who were not told at the time that their land was still their land because the government was issuing faulty deeds for land that still belongs to the people under the law of Section II, should go together to the U.S. government, the one who made the mess. She said no wonder the U.S. government is worried about settling this compact now as it addresses Section II. She said the Crow people could benefit from the settlement, although just a few people are left that were actually victims of the Section II foul up and the rest is in complicated heirship. They have to all get behind this, and try to have compromise between the Tribe and the State of Montana and everybody will benefit from it.

6458 Tape change, Tape 2, Crow Agency, May 18, 1999

0001. Mike Not Afraid, President of Crow Landowners Assoc., Opponent. (Very difficult to hear on tape.) He said they are not well represented as individual landowners. He said a water code is needed before they have a compact in place. With all the contamination happening, the water will be a very valuable mineral and they need hard- line negotiators to negotiate on their behalf. To him, it looks like they have gone to a car lot and taken the first offer the dealer throws at them, instead of negotiating.

0055. Elizabeth Grease, Contracting Officer for the Crow Tribe, Proponent: She said she has seen the Water Resource Committee be active since 1991 and she believes the committee has worked very hard to be able to bring data to the table to negotiate a compact. She said the legislative Committees owe it to the negotiating team to hold a special session – to make that recommendation to the governor. She said there were many critical statements made about the compact but she believes the negotiating committee has worked very hard to bring consideration of a well documented compact. She urged the Committee to consider their hard work and she supports mediation rather than litigation. She thanked the Committee and the Tribal administration for bringing the document to them.

0133. Dennis Big Hair, Sr., Tribal Secretary, Crow Tribe, Chairman of the Montana Wyoming Tribal Leaders, Proponent: (Very difficult to hear on tape.) He said he had just returned from Washington, D.C., and that the issues being talked about take a lot of effort and a lot of courage to talk about it. He said people have to get together as one in order to get anything done. (cannot hear on tape) He said they have to deal with reality and get what they can, and they cannot be fighting each other. His philosophy is to try to get the Crow Tribe together. He said to sit down with the state and negotiate.

0310. Urban Bear Don't Walk, attorney, landowner, Proponent: He said when they were asked to participate in this project they had to give it a lot of thought. When he said "we", he meant Barney Cummins, Bob Kelly, and Cedric Black Eagle and himself. He said for almost the first time the Crows came together for the benefit of the Tribe and for Tribal members. They had to attempt to set their differences aside, at least when they faced this project. He said he heard a lot of political rhetoric but he didn't hear anyone really dealing with the issues in the compact or addressing those. He said if people are saying this is the first time this matter has come to the attention of the Tribe that is wrong; this has been around for a long time but they just haven't dealt with it before. He noted that litigation is held in

abeyance for the negotiations to take place. He said he supports the compact and thinks it is the thing to do. He asked when they would stop trying to find the right attorney who they think is going to make them rich and famous because he doesn't think it will ever happen. He said it didn't surprise him that the BIA decided to take a hike at the 11th hour, because when they have to ask the Bureau what their trust responsibility is they are starting from the wrong position to begin with, because what they tell you may or may not be so. He said this is the first leg of a package and they need to go on and find out exactly what the Section II part is going to be all about. Therefore he said it is important that this go to the state for a special session. He assumes people will go up and make their comments, but noted this was not a Tribal council.

0515. Barney Little Owl, Crow Tribal Executive Committee, rancher, Opponent: He said at this point there is no proper representation on the Tribal side because Mr. Pelcyger has been with the Tribe for a number of years and has litigated for the Tribe and the Tribe has zero because he has won zero for the Tribe. They need to have proper representation and asked the State of Montana to cancel the state session at this point. He said he gets pushed around out there by non-Tribal members and if this thing goes through those people will probably hang him because he is in the way. He believes as professionals they need to get back to the table and do some more at this point. He said he is for the compact but they need more time to do it right.

0628. Angela Russell, landowner, Equal Justice Fellow, member and advisor or Crow Indian Landowner's Assn., Opponent. See written comments and Ray Cross Letter.

0794 Barney Cummins, Executive Committee, Proponent:
He said he ran against Clara Nomee in the last election. He said the big issue is water rights and Section II and that is why they supported this idea instead of litigating the issues. They thought they needed to get an agreement with the state because of the McCarren Amendment. He noted that Montana and the National Park Service negotiated a compact and said the Crow needed to negotiate. He thinks they should have a special session and he is in support of this compact.

CLOSING STATEMENTS

0858. Madam Chair Clara Nomee.
She said the issue is the water compact and she was hoping her people would discuss the water compact only, but they didn't. She said she appreciated all the comments at the meeting. When they first started this, the Executive Committee was presented a resolution pertaining to the settlement negotiations among the Crow Tribe, the State of Montana and the United States involving water rights, the coal severance tax, and Section II. They passed the resolution. It is very important that they do pass the compact. She asked Bob Kelly, Barney Cummins, Cedric Black Eagle , Urban Bear Don't Walk and others to accompany her to Washington, D.C., and they did, to discuss these issues. She said she wished she could take all the Crow members and have them see how tough it is to try to negotiate something in Washington, D.C. She thanked everyone who supported the compact. She said they have to work with their non-Indian friends.

1072. William Benjamin, Chair of Federal Team.

He said the comments he made earlier do not represent the BIA and he is not here to represent the BIA as it does not have the authority to take an official position on this issue. He also stated earlier that the U.S. continues to support the general goals that have been identified during these negotiating processes. They cannot support the compact in its present form because there are items in it they feel need to be addressed. They are hoping those items can be resolved, then, hopefully the position of the United States can change.

1158. Chris Tweeten, Chair, RWRCC.
He said the Commission staff has spent a tremendous amount of time over the last weeks trying to address concerns about the compact. They have not had an opportunity to answer all the concerns that were presented. (tape difficult to hear) He noted the extent to which the United States was involved in the discussions. Also, the compact does provide cost-share on the part of the State of Montana in a companion bill to the water compact bill. He said he is confident that the RWRCC staff will respond to the comments given at this meeting, and asked people to keep an open mind that the compact is a good deal and that there are answers to the concerns that have been raised. He expressed appreciation to the Crow Tribe for their hospitality, and said the Commission is hopeful they can continue this dialogue and bring the compacting process to a successful conclusion.

Senator Grosfield thanked all for coming and for their hospitality and said this was an interesting meeting for all involved, and he hoped they could continue with other issues of concern for the Tribe and the state with these kinds of meetings to get input from everybody.

Meeting adjourned.

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Sen. Natural Res.
EXHIBIT 29
DATE 6/15/99
SB 1

MEMORANDUM

TO: Chris Tweeten, RWRCC Chair; Tara DePuy, RWRCC Crow Negotiating Team Chair; Sam Rose, RWRCC Crow Negotiating Team; Toni Hagener, RWRCC Crow Negotiating Team; Susan Cottingham, RWRCC Staff Director; Faye Bergan; RWRCC Crow Team Legal Counsel; Bill Greiman, RWRCC Agricultural Engineer and Team Leader.
FROM: Joan Specking, RWRCC Co-Team Leader
DATE: June 1, 1999
RE: Summary of Minutes from May 18, 1999 Crow Public Meeting, 7:00 p.m., Sheraton Hotel, Billings, Montana

Chairman: Senator Lorents Grosfield, Chair, Law & Justice & Indian Affairs Committee, Montana Legislator.

Present: Members of the Law & Justice & Indian Affairs Committee; the Crow Compact subcommittee of the Environmental Quality Council and the Reserved Water Rights Compact Commission were in attendance. Please see sign-in sheets.

OPENING REMARKS

0027. Senator Grosfield brought the meeting to order. He explained that there was not time to deal with the proposed Crow Water Compact during the last legislative session, so this was an official meeting of the Montana legislature and comments and proceedings would be included in the legislative record if a special session was called. He emphasized that this was a briefing for the legislators and public, not an official hearing. Copies of the compact legislation were available to the public.

0263. Chris Tweeten, Chair, Compact Commission.
Mr. Tweeten explained the process by which the negotiating parties had developed the comprehensive compact settlement including reserved water rights, the coal severance tax and the Section II issue. He said the objective from the State's perspective in water rights negotiations has always been to resolve Tribal claims while providing the maximum level of protection for existing non-Indian water uses, which the proposed compact does.

0475. Art Alden, Director Crow Tribal Water Resources, Crow Negotiating Team.
Mr. Alden welcomed Governor Racicot , Attorney General Mazurek and the committees to the meeting. He introduced the negotiators for the Crow Tribe. He said a lot of people are surprised that negotiations have gotten this far. He emphasized that there is a three-part package to this compact: water rights, Section II, and coal severance tax. Section II will be dealt with in Congress, and they would like to come up with a deal that is sensible for everyone on or near the Reservation.

0560. William Benjamin, Deputy Area Director BIA Billings Area, U.S. Federal Negotiating Team Chair.
Mr. Benjamin introduced members of the federal negotiating team. He emphasized that the United States supports and continues to support the general goals identified by the state and the Tribe during the negotiating process, however, this should not be interpreted to mean that the U.S. is supporting the compact in its present form. See written statement. Mr. Benjamin asked United States District Attorney, Sheri Mateucci, to make comments regarding Section II.

0695. Sheri Mateucci, United States District Attorney, Montana.
Ms. Mateucci said there is an unprecedented opportunity here to resolve issues that have gone on for decades. She has seen a tremendous motivation and willingness on the part of the Crow Tribe to consider the issues as they affect all the parties who have an interest, specifically the non-Indian landowners. She explained the link between the water rights, coal severance tax and Section II and that settlement of the

water rights issue would allow them to address the other issues and incorporate them into a global settlement package. She said the opportunity would not exist again and that it would be a disservice to the State of Montana and the other parties not to seize this. If the legislature agrees to ratify the compact, a second federal team, chaired by Dept. of Interior Field Solicitor Richard Aldrich, will continue to address the Section II issue. She said the primary issues with Section II are the water rights and the title to lands owned by non-Indian landowners within the exterior boundaries of the Reservation and she emphasized that the latter has to be resolved through the efforts of the interested parties.

SUMMARY OF SETTLEMENT

0860. Faye Bergan, Legal Counsel for the Compact Commission.
Ms. Bergan gave a detailed overview of the articles of the proposed compact.

PROCESS FOR RESOLVING REMAINING ISSUES INCLUDING "SECTION II"; APPROVALS AND TIMELINE

1435. Chris Tweeten, RWRCC.
Mr. Tweeten reiterated that the compact is only one element of a three-part negotiation. He explained that in order for the compact to become effective, there must be cost-share contributions to the settlement which could be looked at as the price the state taxpayers pay for the protection of existing users against an assertion by the Tribe of an earlier priority date. In this situation, the cost-share obligation the state has undertaken is doing double duty because the coal severance tax is also part of this discussion. He said the Tribe offered as part of these negotiations to release its claims under the severance tax complaint it has filed against the State of Montana if the state would make an adequate cost-share contribution in the water rights. He explained that the state cost share is $15 million, payable over 10 years in equal annual installments, contingent on negotiation of the Stream Flow and Lake Level Management Plan, and a resolution of the Section II issue by the Tribe and the United States. When the latter is complete it will be folded together with the water rights settlement into a single bill which will be submitted as a package to Congress. If the bill is passed and funded by the United States, it will come back to the Crow Tribe for ratification by the Tribal government. Following passage by the Crow Tribe, the Compact would be entered into the Water Court adjudication to become part of the decrees for all the water court basins identified in the compact. Once the Water Court has approved the compact the settlement will become final and the contents of the escrow account which will be growing by $1½ million every year plus interest will be paid over to the Crow Tribe. If any of the parties to the compact exercise any of the "opt outs" available under the compact it would terminate the compact, and the contents of the escrow fund would revert back to the State of Montana. He said no money will change hands until the water rights settlement becomes final.

QUESTIONS FROM THE LEGISLATIVE COMMITTEES

None.

1675. Governor Marc Racicot.
Governor Racicot said he believes there is an opportunity available to the Crow Nation and the State of Montana to resolve difficult issues that have precluded the opportunity for other progress to be made on and off the Reservation for Tribal and non-Tribal members. When Tribal representatives came to him last fall and discussed the possibilities of negotiating a settlement it was something he believed had merit. Through this process of public hearings they are listening and trying to determine whether or not there is a broad base of support for this settlement to go to a special session of the legislature. He said he understands there is some anxiety involved as the issues are very serious however this is one of those instances where they are under the gun in terms of time and opportunity. He said he believes the Crow Nation recognizes that as well as all those who speak on behalf of the State of Montana. He said he believes the Crow Nation wishes to move in positive directions with economic development

opportunities. He said he senses a very broad base of support although there is not total agreement and there are some remaining difficulties. He said if there is a broad base of support he thinks that all who describe this as an unusual opportunity are correct, that they have to seize the moment. He thanked for all the people who worked on the compact, Tribal, non-Tribal, federal and state.

1881. Joe Mazurek, Attorney General.
As Attorney General, the role of his office in this compact, as it has been in others, is to provide legal advice to the Compact Commission staff and to the Governor in negotiations. He said he spent most of his legislative career as a member of the Reserved Water Rights Compact Commission, and that he appreciates the work that has gone into this. He said Montana stands out as a model for other states in how to resolve these disputes over water. He explained that Wyoming has had a great deal of difficulty attempting to resolve several issues on the Wind River Reservation, and spent years and millions of dollars in litigation. He said when people go through that process they end up with quantity and a priority date but are unable to deal with other complex issues. He said if people reflect on the testimony Faye Bergan gave about all the issues resolved here, in terms of not just the water rights and the taxation issues, but also the intricacies of those issues, it's critical that they address the broad scope of those issues. He said they need a compromise allowing for comprehensive resolution and future administration, and a means to resolve issues as Tribal and non-Tribal water development goes forward. With competing jurisdictions parties spend time in court trying to resolve who has authority to settle disputes and this compact takes care of those issues. He said the relationships they build in this process will last well into the future in terms of the state and the Tribe and Indian and non-Indian landowners. He noted that the result in most compacts is that ultimately the Tribe and the State of Montana go to Congress together and in some cases do battle with the federal government to get the compact passed. He congratulated the Tribal negotiating team, the state negotiating team, and the federal negotiating team because he said this compact is a milestone and he thinks they need to seize this opportunity. He said he understands that there were hearings held on the Reservation that day where concerns were expressed, but he is concerned that they not lose the opportunity. He said they need to get this ratified now, which puts pressure on them to resolve remaining issues between the state and the Tribe primarily -- they obviously will have to wait for the federal issues. He said he hoped the Committee would consider this very seriously as they have an opportunity here they need to seize upon and put the hard work that many put into this to the test of legislative approval.

2072. Governor Racicot.
He said the recommendations of the panel will have persuasive force and he asked them upon completion of the meetings to provide a recommendation to the Executive Branch.

2107. Senator Grosfield.
He said in response to that request, after the hearing they would spend a little bit of time discussing that topic and how to deal with it. They will go into an Executive Session after they finish the public hearing. He noted that the State Capitol is closed and because of logistics asked for a count of how many people present would plan to attend a special session.

PUBLIC COMMENT

2200. Senator Grosfield asked people to limit their comments to 10 or 15 minutes, and to remember that the topic is the Crow Water Rights Compact. He asked people not to repeat testimony from the previous meeting at Crow Agency.

2243. Lorna Karn, Montana Farm Bureau Federation, Proponent.
She said the Montana Farm Bureau has over 8,000 members in Montana. She has worked with Montana's largest agriculture organization for the past 30 years, and currently holds the position of Information Director and lobbyist. She attended meetings in Helena to discuss the compact and several other members of their organization have attended meetings in Billings, Harden and Crow Agency. The

2 of 2

Farm Bureau would like to go on record as being in support of the Crow Water Compact. They are an organization that supports protection of existing water rights. The organization and its members who reside in Big Horn County feel that the compact protects their existing water uses. It also provides for the development of new small domestic wells and stock water uses and solves several other issues between the state and the Tribes. Therefore they urge the legislative committee and the public, members of the Tribe and other people in the room, to support passage in the Montana legislature as well as passage in Congress.

2320. Jerry Jones, President, Big Horn County Livestock Association, rancher, Proponent.
He said their ranch lies mainly east of the Crow Reservation with a small portion within the Reservation. He explained that in the early 1970s, his father filed for all the ranch's existing water rights and as of this date, those water rights cannot be adjudicated until the Crow Tribe develops their own water compact. Now that the Crow Tribe has developed their water compact he personally, as well as the Big Horn County Livestock Association, wants to give support to the passage of this water compact.

2354. John Chaffin, Attorney, U.S. Dept. of the Interior, Field Solicitor's Office, Federal Negotiating Team, Opponent.
Please see written statement.
Mr. Chaffin explained some of the concerns the federal team has with the compact. He said they are primarily concerned with the Streamflow and Lake Level Management Plan, the provisions on Bighorn storage, and the provisions on the ceded strip. Regarding the Instream Flow and Lake Level Management Plan, they believe there is no direction given as to what the parties want the negotiators to do for this plan. In addition, they have a problem with the requirement to develop the management plan within a year. If ratification of a management plan is not completed within one year after legislators pass the compact, then the state can withdraw its support of the compact. The federal government has a two-fold problem with that, because there is a federal facility authorized by federal statute and what is being proposed is a change in how it would operate, and they do not feel such a change could be made in a year. He said they do not have serious reservations with the idea of a committee getting together to develop a plan when they are given adequate direction in a compact but there is a lack of direction and that concerns the federal team very much. The next concern is with Bighorn Lake storage. A summary that went out to the public says 150,000 acre-feet can be used to supplement the natural flow in dry years, but the team believes the language in the provision is unclear and it needs to be clarified. The third thing the team is concerned with is the water rights on the ceded strip. The concern is that the provisions in the compact do not indicate that the waters of the Bighorn and Pryor and the other peripheral basins except for the Little Bighorn can be used on the ceded strip. The federal team thinks there should be a reference in each of the basins that the water can be used on the ceded strip. What the federal team presented in their testimony was a list of 24 issue points they have with the compact. He said if those problems were corrected it would resolve most of the concerns they have with the compact, except for the global settlement which they have major concerns about. He complimented the Compact Commission and said under the management of Susan Cottingham they have an excellent staff. He also noted that Robert Pelcyger is an excellent water law attorney.

2885. Keith Bales, President, Montana Stockgrowers Association, Proponent.
Please see written statement.

3052. John Stevens, Big Horn County Farm Bureau member, Proponent.
He said he supports the compact and it settles issues among the Crow Tribal members and non-members on the Reservation. It protects existing water rights and water uses while appropriating new water rights for the Tribe. Therefore, he urges support of the water compact.

3084. Senator William Glazer, Proponent.
He said the short and long-term future of Big Horn County and the members of the Crow Tribe is at a crossroads tonight. He explained that the future of the Crow Tribe members and the non-Indians living on

the Reservation and the ceded strip will be enhanced as people participate in this southeastern Montana economic area, and resolve this barrier to their common future. He said no one can continue as an island in southeastern Montana and that they must reach out in friendship and understanding to improve their common lives. The non-Indians and the Crow Tribe, area farmers, sportsmen and everybody involved in this process must work for a common future, and the compact is the first critical step. He said the critical step must be taken quickly and that the economy of the area is at stake. He told Governor Racicot that was an important moment in his history and the history of the legislature, and the history of the people in southeastern Montana, and also a very important moment for the future of the Crow Tribe.

3190. Representative Bill Eggers, Opponent.
He noted he did make a lengthy statement at the Crow Agency meeting and it's his position that the settlement is premature and needs to be further negotiated. He said there are a number of serious substantive provisions that need to be looked at and they are a matter of record in his oral and written testimony. He read a petition which was given to him to present to the committees, and he noted there are over 200 signatures on the petition so it had merit to it. The petition is captioned "Petition protesting proposed Crow Water Compact" Please see petition as submitted to the record, and please see Rep. Eggers written statement to the record.

3300. Mike Webster, Attorney with Crowley law firm, Proponent.
He said he represents a number of non-Indian farmers and ranchers within the exterior boundaries of the Crow Reservation and he congratulated the people who have worked on the agreement. He said when he first heard about it several months ago he through there was little or no chance he would need to be concerned about it but as he monitored progress on it he became impressed with the effort and the willingness of the parties to try to reach an agreement and has been impressed throughout with the work of the Compact Commission. He said there are a couple of places in the agreement where he has questions that perhaps should be looked at by the Commission as they return. One of those is in Article III, regarding Willow Creek Reservoir and priority date of May 7, 1868. He noticed that the priority date of the water behind Yellowtail Dam was handled in a different manner and wondered if that inconsistency was intended. Also in Article V. B.2., there is reference to individual Indians and their rights to acquire water rights recognized under state law and the compact talks about off-Reservation rights and he wondered if it should not also talk about on-Reservation acquisitions. One additional point, in Article VII, A.4.d., he said the word "date" needs to be added into the agreement. He said none of these issues are small, all are difficult to resolve, but he is not sure that more meetings resolves them. This agreement is not perfect and if he could redraft it he would but his draft would not be perfect either. He thinks it brings closure to a lot of issue and helps to resolve some terribly longstanding and difficult issues that have not been good for the Reservation community as a whole and he believes it is in the best interest of both Indians and non-Indians. He urged support for the compact.

3443. Al Keebler, Rancher, Opponent.
He is not concerned with the Reservation part of the compact but he is concerned with the ceded strip. He lives on Cottonwood Creek where his dad homesteaded in 1912. They have always had the water and there is no water that comes from the Reservation down Cottonwood Creek, yet they are included in this and he doesn't think they should be. He said this is just a deal (can't hear on tape) ...a little rancher, individual loses his rights. He said they are losing their rights every day and this is just another one of them. If they could tell him that there is any water that comes through the Reservation down Cottonwood Creek he would say the Tribe has a right to it, but they don't have a right. They have about 5 acres that drains into Cottonwood Creek which is not live water, but a little run-off. He would like to leave Cottonwood Creek out of the ceded strip.

3515. Francis Harris, member Crow Tribe, Opponent.
She said by the time she was 14 years old her grandfather had taught her all about the 1920 Act, especially about Section II. She said Sheri Mattucci has a definite conflict of interest, noted Clara Nomee's conviction and said she attended the sentencing hearing .... Senator Grosfield asked Ms. Harris

if she would talk about the compact. She said regarding the compact, when people talk about the Crow Tribe, there is only a small group and they do not represent the whole Reservation.... She said at Crow Agency, every person who spoke besides Clara's employees were opposed and they were not running for Tribal chairman. She asked Governor Racicot and the legislators to think, and that the opposition they heard was not just political. Regarding the water compact, on the southern part of the Reservation, she asked why Pass Creek was left out and why it's not on the map. She said if people think they are going to ram rod this down the Crows' throat, she is appalled and this is like Kosovo...There is one alternative, if people persist and won't listen....and that is they need to go to all the taxpayers....send big notices to all the taxpayers in every county in the state and ask them if they want to pay to have legislators come back in for one session for this Crow water compact when it doesn't really represent all of the Crow Indians. She said she's not saying things should not be settled but they need to be done right and they need to be done by all of the Crow members, not the little crew that's working for Clara Nomee....

3892. Cedric Black Eagle, member Crow Tribe, member of Section II, Severance Tax and Crow Water Rights Committee, Proponent.

He said he believes an opportunity has risen to resolve longstanding issues that are very important to the Tribal members and that Tribal members are very concerned about the issues that have been discussed. He said a lot of these issues have been around since 1920 and he thinks the opportunity to resolve them has come to a head as far as the state legislature, the governor, and the Tribal Chair is concerned and it's an opportunity for them to finally come to some conclusion of these issues. He said the benefits he sees in being part of this committee, and he has not participated in all the meetings and the negotiations but he thinks, for him, the issues and what they are looking for from the Tribal side is a win-win situation and something for the economic benefit of the Crow Tribe. Big Horn County, a large portion of which is the Crow Reservation, he believes is one of the poorest counties in the state, basically because of Section II and the non-enforcement of Section II leading to the checkerboard within the Reservation. As far as water right claims, the treaties have given them the claim for their water but they have to have rights in order to do economic development. As far as severance tax and the concession the state is looking at, with all of these three major issues at hand, once resolved he believes it will give the Crow Tribe a very sound foundation to help them begin moving forward with the economics of their Tribe and that is his major concern. As far as the clarification of all concerns that have been talked about in these hearings, he believes the compact should be resolved and that the final say be brought back to the Crow Tribe on a secret ballot vote.

4065. Janet LaForge, member Crow Tribe, Opponent.

She said people don't know it but this made history today for a lot of people sitting here in the audience and they have not been able to get up and talk like this at their own Council. A lot of them feel that this water compact should be a water compact only. They think that this is such a diverse, complex issue it should all be separated out and each dealt with separately. There are a lot of people saying they are not behind this compact. The question should be, not if this should go to legislation in a special session, but let the Crow Tribe take a referendum vote on it without wasting the taxpayer's money. She said they should have the referendum vote now.

4188. Mary Bird Hat, member Crow Tribe, Proponent.

She said she is for the water compact and she is speaking for her boys and her family and she wants to do this without wasting tax money and going to court. She said they should do it the right way, and she is for this.

4227. Dan Scott, non-Indian landowner on Crow Reservation, Proponent.

He said he is not a major water user although a lot of his friends and neighbors are, and in his conversations with them he hasn't talked to anybody who really has a major concern with this compact because of time. It is not perfect but there are no major concerns as far as the ranchers are concerned. He said that he is one of those who have been accused of being a violator of Section II. He's been on the Reservation for most of his life and he's struggled with the problems with Section II for a good part of

that time. In the attempts to settle Section II over the years it's become pretty clear to most people that there is no legal solution to Section II. Whatever the way the court decides, there is going to be a lot of problems and it won't be a perfect solution. There are other people besides the landowners including Indian and non-Indian communities that will be damaged no matter which way it goes. There is only one way it really can be solved, and it has to be through legislation. He said they have attempted that for the last 30, 40 years but it's been impossible as they haven't had movement from Washington or any legislative body. He said there is unity coming from the Tribe and they are interested in getting Section II and the water compact solved, and they have worked for this for 40 years and it would be a great opportunity and experience for many of them to join with the Crow Tribe to work on the same side of the issue with the major members of the Tribe. To settle and resolve the problems of Section II and this water issue is the first step of that and he urged the committee to ratify the compact.

4375. Kathleen Harris, Opponent.
She said the only thing she would like to know is that all the Section II violators have known that they were violating Section II and how many thousands and thousands of acres have they bought since they knew they were violating Section II?

4400. David Turns Plenty, Jr., member Crow Tribe, Proponent.
He said he would like to say where he stands because he believes there will be a lot of people affected by what goes to the legislature as far as the compact is concerned. He said he believes this is going to be a benefit not only to him but to his parents and other elders, and his children and relatives. Politically speaking, he is personally against the Crow administration, but when it came to the issue of the water compact he jumped on board and studied as much as he could to understand what he might be getting his family into. When he did that, the one thing he understood was that he was not considered during the Yellowtail Dam era, but with this water compact he believes the future of his kids, whom he holds dearly to his heart, have a lot to benefit from. Behind him there are people who say that they are opposition or they are for this but he believes they will be making a step in the right direction if they will call for a special session...give them this time to continue these negotiations, take it to Congress, bring it back and vote for it themselves, then they can separate it into three issues among themselves. He asked the committees to please continue and call for a special session...and to please let this go through.

4600. Ken Coffman, manager of Huntley Project Irrigation, Proponent.
He said the compact doesn't really have much of an issue for him as they are on the end of the ditch. But, they do have a water right on Black Creek and on Pryor Creek, and they use them occasionally. With the support of his commissioners and himself, they do support the compact.

4638. Blake Wolf Tail, member Crow Tribe, Crow Executive Committee, Opponent.
He said as far as the present state of the compact he is not for it, because there are some issues that the federal team has and what he proposed as a Crow Tribal member is to keep the negotiations going....He said if it's that important, this will not go away. He said this is going to be with them until the day they die and in the next generation it will keep coming up. As far as this piece of legislation in its present form, he doesn't like it and he is not going to support it. He said maybe the state and Crow negotiating teams should get some more experts in this field and more support from the opposition of the Crow Tribe....He asked regarding time constraints, what time constraints are there? He said they have the millenium and beyond to negotiate. He said the white ranchers on the Reservation are saying pass this while they are talking about Section II but Section II is supposed to be working for the Tribe ...there is something amiss here and there are a lot of questions he has and he asked the committee to come to some conclusion to have further negotiations instead of going into litigation because he said that isn't good either.

4782. Quila Frost, member Crow Tribe, Proponent.
She said she was born and raised in Crow Agency on the Little Bighorn River. She pays taxes in Big Horn and Yellowstone County and she is 100% for the compact.

4822. Pat Goggins, landowner on Pryor Creek, Proponent.
He said this is a situation that's meaningful, and they have been following for 45 years quite a few Reservation agreements from Washington to Minnesota to New Mexico. They work with ranchers and farmers and have for over 60 years. He said every one of the Reservations with the non-Indian and Reservations trying to get together on various settlements, grievances, treaties have all been better. He thinks this one will turn that way. He pointed out that it has been noted that Big Horn County as an income group is low. They all know that wage scales and income and poverty levels on the Reservation are not what they ought to be. He thinks if this would be settled between the water which is tied to the titles, Indians and non-Indians alike who own land on the Reservation are going to see an immediate plus. Many folks, Indian or non-Indian who own land have problems. No one wants to get involved because of the Section II cloud on titles. The other three Reservations in this state that have worked out their disagreements are now much better off than they were before....there are some problems, maybe some changes needed, there were some points brought up by the federal team, and maybe some language needs to be changed to suit them....most of the Indians he does business with say this needs to be done. He said it's time to quit fighting and everyone will be better off for it. He thinks southeastern Montana will certainly be a big winner and he will subscribe to whatever needs to be done and he hopes in the special session that this will be over with and done and people can get back to getting the loose ends put together.

5001. Senator Reiny Jabs, Proponent.
Senator Jabs said he lives in the middle of the Reservation and his land is under the BIA irrigation project. After looking over this compact and discussing it with people, he thinks it's fair to everybody, it protects existing water rights, there is a good working relationship with the Crow Tribe and the state and they should seize the opportunity and go ahead. He gives his full support for the compact.

5055. Bob Kelly, member Crow Tribe, Tribal Negotiating Team, Proponent.
He noted he is not an employee of the Crow Tribal administration and he has pretty adamantly opposed the methods of the administration for some time. In the past he has opposed other administrations because he is always trying to fix the government. He has 9 children both enrolled and not enrolled in the Tribe and 1000 acres of land on the Reservation with water running through it and he has a vested interest as much as anybody in the room. He said he knows what's in the compact and understands it and knows the word negotiation and what it means, and it's something that is done before people go to court, not afterwards. Negotiation means giving and taking,...and being aware of all the other issues that are there....He said to read the court decisions,....the State of Wyoming and the Wind River Tribes spent $25 million litigating issues and when they were done they were back trying to get adjudicated and quantified water rights for the people using the water. He looks forward to having the Tribe give him a water right to use the water on his property. He has full trust in the Tribe in doing that although he has no plans to be involved in the Water Rights Department. He knows that Mr. Alden has done a lot of research, and he has Mr. Kelly's trust and he has faith in the Crow people that they will operate the water rights commission the way they should, and he has faith that the Crow Tribe will develop a good workable, usable water code as called for in the compact. He has faith that they will come back to the Crow Tribe with an agreement that is acceptable and that they will come back to educate everybody so it can be acceptable to them. He said they are not here tonight to talk about other issues but everybody should be aware that as a negotiator, he has no history thus far of negotiating any part of the Section II with anybody and he's not on anybody's payroll.

5307. Arnie Little Owl, member Crow Tribe, Crow Executive Committee, Opponent.
At this point, looking at the negotiations and the compact he has many concerns. He's a father and he believes that the rights the Tribe obtained were God given rights. He believes the treaty rights are in jeopardy and he would like to have respect for the Tribe and the State, that they come to some agreement that is fair for his children and their children. He believes they are going too fast because this thing at this point hasn't been approached with the new Executive Committee and it needs to be before the state

special session. He wanted to say something because it might be the last time for him to say anything about the compact.

5431. Shawn Real Bird, member Crow Tribe, Opponent.
He said he is a student of Crow Indian politics and a student of economics and he is finishing his masters degree in economics and graduated from University of Montana in business administration. He asked individuals who are scholars for assistance regarding whether or not his trust rights were being recognized. He said the UM law school responded. Please see written statement by Ray Cross, UM School of Law. Mr. Real Bird said there has to be a trust responsibility.

Senator Grosfield thanked everyone for attending and commenting.

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Sen. Natural Res
EXHIBIT 30
DATE 6/15/99
SB 1

MEMORANDUM

TO: RWRCC Crow Negotiating Team, Crow Files
FROM: Joan Specking, Co-Team Leader, RWRCC
RE: May 18, 1999, EXECUTIVE SESSION, Law, Justice & Indian Affairs Committee and Environmental Quality Council Subcommittee, Tapes 1 & 2, Billings.
DATE: June 1, 1999

Senator Grosfield suggested the committees discuss their response to the day because the governor had asked them to give an indication of what they would recommend. He said if there was any thought about a June 16th Special Session it would have to be pretty quick. The Environmental Quality Council would be meeting the following Monday and Tuesday and that would be about as long as the committees could take to make a choice. The Law, Justice & Indian Affairs Committee was not scheduled to meet at all, although a telephone poll could be done. He asked how the members felt about the day and the compact and the need for a special session and the timing of it.

6000. One committee member noted the compact is not perfect but he could see it get a whole lot worse the more the parties play with it.

6014. Representative Rose.
He said he thought they ought to go ahead (hard to hear tape)....he said there would always be resistance to change, but he said the resistance had more of an emotional than practical feel. He said with the work the staff has done, ...and a lot of positive influence from all segments, and he suggested that they go ahead and recommend to the governor that they accept it and move forward.

6069. Representative Lindeen.
She said she would like to move forward but at the same time she was hesitating because she thought it important that the committees address some of the concerns that were brought up, for instance, up by Rep. Eggers and the federal team. If there were responses to those she wanted to see or hear them before she made any decision.

6100. Senator Cole.
He said he remembered the first meeting they had where there were so many people disagreeing and feeling the compact wasn't appropriate and primarily saying they wanted to know more about it. He thinks they have come a long way and that they still have a few things they could probably continue working on. As far as being able to have total agreement on every single item, he does not think they are every going to have that. He said if they postpone the special session they probably won't gain very much out of it. If they could have some of the people from the staff go ahead and explain some of this and make comments on some of the questions that came up...but if the special session is postponed for a few months it would probably create more problems, especially getting close to elections. He noted seeing during testimony some complaints that were more personality complaints than on what they were doing. He recommended going ahead.

6204. Sen. Grosfield asked, if there is a special session, what would happen as far as the three teams go, and what would they be doing prior to that.

6230. Mr. Tweeten.

He said the first thing they would do is provide written responses to comments they have received from Rep. Eggers and some of the other people who have testified. Commission staff would have done that before this meeting had those issues been raised. He said they made extensive efforts to communicate with Rep. Eggers and with other people who had concerns they expressed, but did not hear those specific comments until today. Most of them, if not all of them, are issues that they think have ready answers that the Commission staff can provide. They will have the answers ready in writing as quickly as they can. Regarding what the staff will be doing until June 16, there are numerous technical changes and corrections that need to be made in the document. If it is the wish of the committees that the Commission work on some of the things that have been raised by the United States, the Commission will continue to do that. He said those issues are not being raised for the first time, and the parties have not made tremendous progress in getting them resolved. If the decision is not to call a special session unless those issues are resolved before June 16, he cannot assure the committees they will be resolved. Some of them are fundamental to the stream flow management plan which they have allowed one year to resolve in the compact. The one year time period was criticized by Mr. Chaffin as being too short. If it is the committees' desire that the Commission continue to negotiate, he said, there are numerous provisions in the compact that various parties have suggested be changed, for example Mr. Webster in his earlier testimony. He said keeping this settlement together in the form it is in, while not perfect, is certainly good enough and it will be difficult if they start reopening these issues for further negotiation. The Commission is willing to take that path if the Committees desire but it is not what the staff would recommend.

6433. Senator Cole.
He asked if Mr. Tweeten saw some of the issues as minor or technical that could be worked on with the federal staff. Mr. Tweeten said yes, that they have indicated to the other parties that the Commission is open to technical corrections in the compact draft and will remain open to those until the draft is returned by Greg Petesch and accepted by the sponsor.

6474. Bob Pelcyger.
He responded to some of Mr.Chaffin's concerns, saying some were legitimate, but it is not worth going back and redoing the compact on those matters. One of Mr. Chaffin's principle concerns is about the management plan and he wishes there had been more directives in the compact about what is supposed to be in the management plan. Mr. Pelcyger said the bottom line on the management plan is that they are going to have one or not, and what matters is whether they can get a plan.

(Tape change)
Tape No. 2, Billings

0005. Mr. Pelcyger.
Mr. Pelcyger said they were close on reaching an agreement that would have incorporated some of the issues to be addressed in the management plan during the negotiations....and they finally decided they needed more time. He said a year is plenty of time, if they are modest on the scope of the management plan. He said Mr. Chiffon's other concern was that the management plan must be approved. Mr. Pelcyger said he construes "approve" to be the agreement of the parties but it would not take effect until the compact was ultimately finalized. Regarding Bighorn storage issues, they are subject to the terms and provisions of Congressional legislation.....as

well as terms of management plan....he said that was not a major problem. Regarding concerns about the ceded strip, Mr. Pelcyger thought it could have gone either way in terms of how it was done and the Compact Commission staff chose have the first provisions just deal with the basins within the Reservation and a separate section deal with the ceded strip. He thought that was reasonable and said it could be clarified in committee reports. He said he thought everyone knew that the ceded strip allocation was in addition to and separate and apart from the use of the water on the Reservation. He said in the scheme of things there are legitimate grounds for (can't hear on tape) he really doesn't think those (the most major concerns) are serious and maybe they could agree to some changes that would satisfy some of Mr. Chaffin's problems.

0078. John Chaffin.
Mr. Chaffin asked for clarification regarding the one year time frame for the Stream Flow and Lake Level Management Plan – he said he thought they could reach agreement in one year but for ratification and approval and to implement the language he thinks they need federal legislation and he has a serious question whether or not the delegation will even get this introduced within a year because of what they now refer to as the global settlement. He presumes the Secretary of the Interior will give the federal team authority to negotiate on the Management Plan. Mr. Chaffin said he expressed his concerns that in ratifying this ....if they can work on the language on approval so that they don't have a federal statute hanging over his head on that approval, that goes a long way. Hopefully they can work this out so that they are not looking at some other environmental statutes. He said there are ways they can work around that if they get the flexibility in the language. He said he talked to Mr. Tweeten and Ms. Bergan about the Bighorn storage and he thinks through technical amendments they can make that clear so there is no question as to what the second 150,000 acre-feet is about. He agreed with Mr. Tweeten and Mr. Pelcyger that it is just a basic disagreement as to how they describe the water on the ceded strip.

0132. Representative Clark.
He said he listened to a lot of people today and they talked about this as something they are going to do in the legislature like they are negotiating this for themselves and they need to get the deal cut by June 16th or it's not going to happen. He said every time he feels that kind of pressure he feels like he is being conned. He said he is in a position where he is going to cast a vote that governs the lives of Tribal members and he is not even a member of the Tribe, or in the position to start the process whereby they are going to be allowed to make a final decision. So, they are offering the Tribe a chance to make a final decision on what they think is a good deal for the Tribe. They are going to have a special session based on what they think is a good idea and they don't even know if the majority of the Tribe agrees. He said after going through the meetings he still couldn't come up with an idea of whether the majority favored this or not and he said he didn't think the committees could control that process. He said the best idea he heard today was to have a referendum first and see if the Tribe is behind this plan or if the negotiators are just talking to the Tribal leadership. If the leadership were the only group that was going to vote on this, then it would be no problem to have a special session, but that is not the case. He said there are some really important issues: the federal team issues, Bill Eggers issues, and some of the issues that came up by individual members of the Tribe should not be clouded by the idea that they were just political statements, and he does not think that was the case. He said some of the concerns they related had merit. For example, what is the Crow water code? What does that mean? What are they allotted? How can you guarantee

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water rights for non-Tribal members when Section II issues have not been resolved. Is the cart before the horse? His preference would be to give it another month or two to resolve these important issues and not push it to a June 16th deadline whereby everything else needs to be contingent.

0215. Representative Juneau.
She said she tended to agree with Rep. Clark. She thought it was good they came today to the meetings to listen to the Indian and non-Indian side. She wished all the legislators could have been at both the meetings because it would be a small group that goes back with this information and it would be hard for them to share that information if they have a special session, because you actually had to be there listening to people and their concerns. She said they are really seeing a tribe divided and she said she was really divided because of that. She said she believes very strongly in the sovereignty of the Tribal government and the Tribal leadership to make decisions but she also believes very strongly that the people have a right to speak out and they heard that on the Crow Reservation. They did not hear one non-Indian speak out against the compact and that kind of sends a red flag up for her. If there had been a couple of non-Indians speak out against it she might have thought it was okay. She said she comes from a reservation background and that is their history; they are suspicious and they have a right to be so. She said it stresses her to see the Crow people divided so strongly over this issue and she wished it wasn't so. Land and water make up who they are and their land base and their Reservation is their homeland and they stand to lose a lot sometimes when things take place and they lose their water or land, and lose their identity with that. She is concerned; she doesn't know whether they are ready for a special session to vote on the compact. She does not feel comfortable doing that with the dissention on the Crow Reservation. She thinks there are lots of questions unanswered among the Crow people. She said she thinks the federal decisions can be made and the people there can solve those issues, but she agrees some time should be given, maybe a couple of months, then have a special session. Give a couple of months to the Crow people to talk and work things out. They have waited a long time for these things and time might help it. She said if they give a recommendation for a special session they are pretty much saying the compact is okay and she does not know she is ready to do that tonight.

0325. Representative Stang
He said he listened and after spending a few sessions on the Indian Affairs committee he kind of understood what was going on and he tried to discount the personality stuff and the issues with the Tribal government from the issues of the compact. One person brought this up, and he asked why June 16th is such a magical date? Is it because some of the legislators will be there and it is easier for them because they don't have to make another trip to Helena? Is that why they are rushing through it? What is wrong with June 23rd, June 30th, July 5th? He said the sort of issues raised need a little more time to look at. A gentleman at the meeting asked "why is it we never have time to do it right but we always have to do it again." Mr. Stang asked again, why June 16th is the magical date? He said if the Indian Affairs committee needs to be called in to listen to what the team found out about it, then they should do that on June 16th, but don't call the whole legislature in and tell them they are ready. If he had to vote on it today he would vote no. He said that some of the people who spoke against it today said they think they need a compact, they don't want to litigate yet they don't exactly like what's in it, but he thinks there were some issues brought up. He said they should do it right the first time.

0389. Senator Bohlinger.
Senator Bohlinger said he wants to see the body move some sort of agreement forward. He said this is a unique opportunity to deal with, as the governor said, some particularly thorny issues. He said they are dealing with problems that have troubled the Tribal and non-Tribal members for the history of time. They are moving an agreement forward that has gained considerable support. However, he said he thinks some concerns raised by Rep. Eggers need to be responded to and noted that Mr. Tweeten said the Commission will be able to provide a response to the questions that were raised. He said Mr. Chaffin raised some issues that need to be responded to and he thinks it is important that whatever agreement they bring forward to the body at the time of the meeting of the special session be an agreement that responds to the concerns. He would rather not move it forward in a hasty fashion and would rather see it move forward in a thoughtful fashion, realizing that there will always be a certain percentage of people that will say "no, this is not the agreement that I can support." He said it will not be adopted unanimously, but with what they bring forward, he thinks they have to have the assurance that this is what most Tribal members would say is fair. He said he does not want to do it hastily and questions the need for doing it on the 16th of June and would rather make sure they have responded to the critics of this agreement and then bring the issue forward.

0460. Representative Stovall.
Rep. Stovall said, to answer some questions that Rep. Eggers brought up, that he was invited to every meeting and the negotiating team called him and asked him to be part of the negotiations several times and he refused to have anything to do with it. He said it seems strange that in the 11th hour when it gets down to the nitty gritty all of a sudden Rep. Eggers brings up these concerns. If he had legitimate concerns that really concern the Crow Tribe, why didn't he come to the negotiating meetings and work them out? Rep. Stovall said that is the way to negotiate, but Rep. Eggers didn't do that. Rep. Stovall said he doesn't really think that was fair...As far as support from the Tribe, he said ...in the Crow Tribal politics they have certain factions...on this testimony they had that day they had two of the strongest political factions agree with each other and support the compact. He said in the last Tribal election for Tribal chairman Cedric Black Eagle and Barney Cummins, got about the same amount of votes that Clara Nomee did – about 1200 votes. He said that is about 2400 votes that voted for the people who are supporting the compact. He asked where the ones who are not supporting it are...As far as wanting to do the referendum now, how can they do a referendum now when the final agreement is not done. He noted it is not only the compact, but they have to get an agreement on Section II. He said what they should do...as far as ratifying it by the state legislature, that is just the first step and it only begins the process. He said when the state ratifies it then it will go to Congress, they will work out the Section II issues and if Congress ratifies it, then it will come back and they will have a secret ballot referendum vote by the Crow people which he advocates. He said that is the only way they can do it and they cannot do it backwards. He said if the legislature doesn't want to pass this it can be litigated but it costs, according to the experience that Wyoming has had, right at $50 million and they still don't have an agreement. They are litigating a Supreme Court decision right now. He said everybody who is involved will benefit from this compact, Indian and non-Indian alike and the State of Montana. He has a hard time understanding why anyone would want to stop this process...and it's not the end, it's just the beginning. He said if it is stopped now it will probably die because this negotiating team will quit. This is a very important thing to the Crow people.

0604. Representative Shockley.
He said he had the same feeling initially about letting the Tribe vote first in a referendum, but then, quite reasonably, they want to have the last word after the legislature and Congress have made an offer. He said having them vote last makes sense. He thinks the Committees ought to focus on what their job is. They represent the people of the state of Montana and they should be thinking about what is best for the people of Montana. He does not think they should be second-guessing the Crow government. The Crows have been trying to get their independence for decades and their self-respect and he doesn't think the legislature of the state of Montana should be second-guessing their government. If their government thinks this is a good deal for the Crows and they are going to send it to the Crow people to vote on it then that is the way it should be. He said the legislators should not say the Crows don't know what they are doing – that is paternalistic and demeaning. The legislators represent Montana, they think it's a good deal, have a session and vote on it. If the Crow don't want to, that is democracy. He suggested not getting in their affairs as it is demeaning to them.

0675. Representative McGee.
Rep. McGee said his understanding is that this agreement has already been approved by the Compact Commission and by the Tribal government. Secondly, what the legislators would be doing by passing it would be to ratify what two other entities have already agreed to. The question came up as to why June 16th for a date. He said to remember that this was talked about during the last session. The idea was to fast track the compact because there is another entity involved in this and that is the Ninth Circuit Court of Appeals which can call for the question on the appeal at any time. He said they run the clock, which is why if there is going to be a settled vs. litigated agreement it behooves the legislature to move forward and done with the state's part. He said he has read the compact and there are several conditions protecting the State of Montana in case the compact falls apart. There are the same conditions, generally, for the Tribe and for the United States. He said it seems to him that every base for being able to back out is covered. The state is not obliged to anything if the conditions of the settlement are not adhered to in a timely fashion and in substance. He said he had been thinking about it all day...and like Rep. Juneau said, the non-Indians seemed to be generally in favor of it, so he said he wouldn't argue that. He recalled there was one individual who argued about Cottonwood Creek. He said his point is that the Compact Commission says yes, the Tribal government says yes, they have asked the committees to give some counsel to the governor as to whether or not there ought to be a special session and if so, when. The issue for him is that enough people have looked at this compact, although it is not perfect and the United States people would feel more comfortable if they had certain issues addressed. He believes the management plan will come forth with the same people who put together the settlement and if they don't do something now, all the people who worked on it will go away and there would not be a settlement. Regarding June 16th, he said the date has been picked by leadership and the governor, and although it is an ambitious time....the question before the committees is whether or not to go ahead with June 16th. He is in favor of going ahead and voting for it and getting it finished. As it has been said, this is the first step, not the last and the state and Tribe are protected and the United States is protected. It isn't perfect but it's a beginning and that is what they are talking about.

0804. Representative Gillan.

Rep. Gillan said she is troubled by all the lukewarm endorsements. She noted as Rep. Stovall said, this is really the first step. If this is the first step then her preference would be that they do it from their strongest point. They all know from their negotiations over the last 90 days that they are in a much better advantage if they are at a strong point. She said if there are some technical issues that need to be resolved, they need to be resolved, and if that requires a delay then she favors delaying it because she wants them to go forward from their strongest position and right now would have to vote no.

Senator Grosfield asked Mr. Tweeten if he wanted to comment on the time frame issue.

0838. Chris Tweeten.
Mr. Tweeten thanked Senator Grosfield and said he agrees with Rep. Shockley, and he thinks that the Compact Commission as negotiators would be put in an untenable position if the committees tells the Commission they cannot go forward with negotiations with a Tribal government unless the Commission is satisfied that there is a sufficient level of support among the Tribal members as well as a Tribal government. He said they have been often told of the value of government to government negotiations between the state and the Indian Tribes in Montana. The governor has been fundamentally in support of that and the attorney general has been in support of that. The Compact Commission is built on the premise of government to government negotiations. He asked who they are to negotiate with if they cannot accept at face value the elected government of the Tribal entity with whom they are negotiating. He asked how they could say as a Commission that they are not satisfied that the Tribal government has a mandate. If they did say that, the agreement would not be submitted even though agreed on by both parties. He said in the context of government to government negotiations they have no choice but to negotiate with the elected government of the Crow Tribe. That is the Compact Commission mandate, and he thinks they have done a good job of completing a compact that satisfies those concerns. He said if it the will of the committees that they negotiate further, they will do so. But if the special session is put off until September for further negotiations he believes the federal government still will not be in a position to testify in favor of the compact. He said in addition, the same tribal people who testified in opposition to the compact would come in and testify in opposition in September, because they were making the same statements months ago. He strongly urged the committees to reach consensus on whether the Commission should go forward or not. He said it would be extremely damaging to send the governor a recommendation along party lines either in favor of or against a special session, and if there is not strong consensus to go forward, then he urged them not to recommend it.

0976. Susan Cottingham.
Ms. Cottingham said when a lot of opposition came in earlier, for example, regarding allottees, the parties put language in the compact in three different places to protect the rights of the allottees, but it did not make a difference to the opposition. She said she understands why they have concerns, but she noted that the Secretary of the Interior does not approve Tribal water codes until the compacts are done. People will have a chance to work within the Tribe to get the Tribal water code the way they want it but that is not a state issue, it is a Tribal issue. She said the concerns of the opposition have been listened to. She agreed with Mr. Tweeten that if there was not a consensus it would put the Compact Commission in a terrible position to feel the legislature was divided on this.

1022. Senator Cole.
Senator Cole pointed out that an April 10th Tribal council resolution passed in support of the compact. He said the executive committee, made up of elected officials from all over the Reservation and off-Reservation, supported the compact. He said he did not know where they could get any stronger support from the Tribal government saying they support it and want to go ahead with it. He said it would kind of be second-guessing the Tribe to start questioning them. He reiterated that things probably won't change too much if they wait another 2 or 3 months, and he hopes they have strong support to go ahead with this.

1067. Senator Grimes.
Senator Grimes said it seems that almost everyone recognizes this as an opportunity, and they did commit to the Tribe early in the session that they would try to do everything possible to be more amenable to their concerns. He said this is unique because it is not that they are deliberating the issues - they are being asked to validate a negotiation that has already taken place with the elected Tribal government. He said he does not need to "rehear" the bill, but he needs to decide if it's reasonable for the constituents that he represents to go forward with this. He said in any contract negotiations, there comes a point where people have to anchor some things in order to go to the next step, and that is all he sees this as doing. He said he sees this as setting in concrete some things so they can go to the second step. He said it would be a real disappointment to the legislature to deny the people who have worked so hard on negotiations and all the people they represent present and future by not validating this effort.

1127. Representative Hagener.
Rep. Hagener said she wondered if everyone felt as she did that this was an opportunity to participate in a very rare circumstance. She said there was a very rare offer by the Tribal leaders when they asked the state to begin negotiations in connection with this, and there was a rare agreement by the legislative leaders who encouraged this to take place. She said they had an extremely rare and dedicated effort on the part of the staff of the Compact Commission who directed all of their activities and efforts to trying to come up with something in the way of a negotiated settlement and to work with the people in connection with it. She said they had enough concern with the issue that they even thought of having a special session which takes a lot of concern because of the cost and other ramifications that go along with it. It was her understanding that June 16th was chosen because there were several other meetings being held about the same time and it would be more logical time-wise. She said sometimes legislators they do not totally understand all the ramifications of all of the bills and the issues that they handle, and this is no different. She said she is not sure a delay would change attitudes and it has been her experience that once people are in position they won't change it. She said they need to consider that this has been something rare and unusual and they have an opportunity to move forward with it and it would be a shame not to do something with it. The parties need to continue to deal with the people with concerns.

1200. Senator Stang.
Senator Stang said he thought a logical action to take would be to recommend to the governor that, if after reviewing the tapes and reports from the negotiating committee the governor and the attorney general feel comfortable with what they have heard, the committees should recommend a special session sometime before the 1st of July. He

said if he had to vote that night there would be a lot of things bothering him about it. He said they should go on with the compact and they should not negotiate forever but he thinks the governor should know that there are some issues out there and if the governor and attorney general are comfortable they should call a special session before July 1st. He said if they wait longer than that they run the possibility of losing the negotiating team. He said the sooner the better, before July 1st.

1307. Representative Lindeen.
Rep. Lindeen said she agreed with Senator Stang. She said listening to the conversation she did not think that her issues should have anything to do with holding up the decision and she agreed that the governor had to decide what the date will be. She said if the committees can make a recommendation that it should be within a certain time frame she would be comfortable voting yes to do that. She moved they move forward.

1333. Representative Rose.
He said he appreciates the people who have heard this for the first time and said he had the same frustrated feelings it was going too fast. However, he said the Commission staff has worked with the people for the last 3 or 4 months to iron out the details and he has a strong feeling that they are at a point where he thinks they should move ahead. He said this is just the first step as they have to go through Water Court and other areas of expertise. He said the time has come to do something and delaying it will not make it better.

1377. Senator Grosfield said a motion was in order although it was awkward as there were three different committees there. He stressed something Mr. Tweeten said about not coming out with a recommendation that has a 10 to 8 vote or something like that. He said they are talking about something fairly significant...and people are going to expect it to be a thoughtful decision. He said he hoped they could have a fairly good consensus on whatever they come out with.

1418. Representative Clark
Rep. Clark said he thought the compact should go forward. He said everyone there wants resolution without litigation. He said excellent work has been done, and the work done that day indicates a little bit more work needs to be done and it will be a much better document. He said what he could support is to ask the governor to look at the questions when they have been answered, and to more forward resolutely to answer the questions. Given that, he said he supported forward movement.

1458. Senator Grosfield said he thought that was more or less what Senator Stang proposed.

1458. Representative Shockley.
He said the governor wanted the recommendation of the committees, he did not want the buck passed. He said they shouldn't dodge the issue and tell him to go over the minutes and come to a decision - he said he wanted their opinion and Rep. Shockley said he was willing to give it to him.

1474. Representative Gutsche.
She said she agreed with what Rep. Shockley said and although she understands what Senator Stang is trying to do, the extra two weeks does not really help answer her concerns. She said she appreciates the comments of Rep. Rose, but she is

concerned with the questions and she is really concerned about the June 16th time date, not about whether the compact can move forward. She would not be able to support the June 16th time frame now because there are questions not answered. Some things came up about the concerns that Rep. Eggers brought up and why they hadn't been answered earlier. She said they do not have answers to those questions right now. Many people supported what Rep. Eggers had to say and other people commented that this was the first chance they'd had to speak out. She said those are the concerns she still has and that is why she cannot support that date.

1522. Senator Grimes.
He said Mr. Tweeten said some of those questions had not been responded to previous to that days hearings. Maybe the way to proceed is to support a special session and in doing so they would ask the Commission to research those issues for them so they will have those questions answered by the time the session gets there.

1543. Senator Stang.
He said that what he would say to the governor is that he's heard the questions and if the right answers are there then call the special session. He is perfectly comfortable if the governor or Attorney General Mazurek thinks those questions have been answered. He said they could spend two months having communication through the mail between Mr. Tweeten and Rep. Eggers regarding these issues, and they really don't need to spend that much time. This puts the onus on the team and Rep. Eggers to get the questions answered before the special session.

1596. Representative Lindeen.
She noted that Mr. Tweeten said they could answer Rep. Eggers concerns within a day or so. She said that this is the first step in a long process and it cannot move forward unless they get through this first step. It the end of that process the Crow Tribe has the last and final say, and with that in mind they need to move forward.

1626. Senator Grosfield said that was a good point and that the Crow Tribe did have the final say. He said they should call the question and find out if they have a consensus.

1643. Senator Stang said the motion is that the recommendation be to the governor that after he and Attorney General Mazurek look at these tapes and feel comfortable that the Water Compact Commission has answered Rep. Eggers questions to their satisfaction that the committee agrees that he should call a special session. Senator Grosfield added "and other questions raised today."

1666. Representative Juneau.
She asked for clarification on the motion. She said Rep. Eggers presented specific questions in writing – what other questions raised, specifically, did the motion refer to – all of them or those of certain people?

1681. Senator Grosfield said he was mostly thinking about the petition, but most if not all of those questions were raised in Rep. Eggers letter or written comments. He said there were other things raised that the negotiating teams were going to work on anyway.

1692. Representative Juneau.

She asked if that would include Angela Russell's questions which they did not get copies of.

1698. Mr. Tweeten said the Commission would circulate written responses to Angela Russell's questions, to Rep. Eggers, and to those made in the petition, and they will send them to everyone. He said some questions were raised in the negotiation, and they will explain why the Commission made the decisions they did.

1740. Senator Stang restated the motion:
It is the recommendation of the committees that a special session be called if, after reviewing this testimony, the governor thinks the issues have been addressed.

The question was called for with two members voting no.

Senator Grosfield thanked the committees and said he hoped the Commission would provide written materials to all of them and that before the special session the negotiating teams would work hard on trying to resolve the technical problems and anything else to be resolved.

Meeting adjourned.

Sen. Natural Res
EXHIBIT 31
DATE 3/15/99
SB1

THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JUN 10 1999

Representative Bill Eggers
Montana House of Representatives
P.O. Box 1000
Crow Agency, Montana 59022

Dear Rep. Eggers:

Thank you for your letter to Secretary Babbitt dated May 21, 1999 concerning the proposed Crow Water Compact and the upcoming special session of the Montana State Legislature.

The Department concurs in your view that more time is needed to assess the settlements reached to date on the severance tax and water issues and to negotiate the remaining elements of the water settlement and Crow Section 2 issues. The Crow Federal Negotiation Team has told the Governor, the Compact Commission, and those in attendance at the public hearing on May 18 of the Department's views on these subjects. The Governor and Compact Commission have listened and respectfully declined to follow the Department's suggestions. The Department also agrees that further definition of the management of the Bighorn River should be included in the Compact.

Although you have raised serious issued, I am informed by our Solicitor's Office and the United States Department of Justice that they do not provide a sufficient legal basis for the United States to ask a Federal Court to enjoin the upcoming special session of the Montana State Legislature. Such a suit would be subject to a quick and certain motion to dismiss because of substantial statutory and constitutional infirmities. Furthermore, the United States would be unable to show "immediate and irreparable harm" necessary to obtaining injunctive relief. This is in part because both the Crow Tribe and the United States Congress still must ratify the proposed Compact before it is final. Thus, the Department cannot fulfill your request to institute injunctive litigation against the State of Montana to stop the special session.

The Crow Federal Team is preparing a response to your April 30 memorandum to Keith Beartusk about the proposed Compact in which the Team will address in detail each of your 31 questions. For now, let me touch on several points raised in your letter to help provide a better understanding of the proposed Compact, and the relationship of the Crow Tribe to the allottees within the Crow reservation. First, we believe that the concerns raised about the alleged diminishment of water rights of allottees are largely unfounded. Allottees within the BIA irrigation project will continue to receive water as it has been historically delivered. Additionally, project lands within the Bighorn River Basin (containing the vast majority of all allottee acreage) have access to water stored in Bighorn Reservoir pursuant to the proposed Compact. Further, all water users within the BIA irrigation project, whether allottees or not, will share water on a pro rata basis. Second, the statement that all groundwater has been released

will share water on a pro rata basis. Second, the statement that all groundwater has been released to the State is not accurate. While existing non-Indian groundwater uses are protected, all other groundwater is a part of the "Tribal Water Right," as defined in the proposed Compact, and hence not subject to direct state control.

Third, we disagree with your analysis of the relationship between the Tribe and the allottees within the Crow reservation. Consistent with the attached Solicitor's Opinion of March 30, 1995, M-36982, our view of the law is that the "Tribal Water Right," as defined in the proposed Compact, includes all valid, existing and future uses that an allottee could make on his or her trust property. Therefore, the United States continues to have an obligation to protect an allottee's right to use water on his or her trust property within the Crow reservation.

Finally, I wish to reiterate that the proposed Compact will not become final unless and until it is ratified by the State of Montana, the United States Congress and the Crow Tribe. If any one entity fails to ratify the proposed Compact, the Compact is nullified. Thus, Crow tribal members have the power to determine the ultimate fate of the Compact, regardless of what the Montana State Legislature does this month, or what the United States Congress may do in the coming years. Please note that the Department has not yet taken a final position on the proposed Compact or any of its provisions, especially in light of its part in a Crow global settlement package.

If you have further concerns or questions about the allottee/tribal relationship or the attached Solicitor's Opinion, please contact Bill Benjamin, Crow Federal Team Chair, at (406) 247-7943, or John Chaffin, Field Solicitor's Office, at (406) 247-7058.

Sincerely,

David J. Hayes
Acting Deputy Secretary

cc: Clara Nomee
Robert Pelcyger
John Leshy
William Benjamin
John Chaffin
V. Heather Sibbison

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Sen. Natural Res.
EXHIBIT 32
DATE 6/15/99
SB1

Another Attachment

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

March 30, 1995

M-36982
Memorandum

To: Secretary

From: Solicitor

Subject: Entitlements to Water Under the Southern Arizona Water Rights Settlement Act (SAWRSA)

This memorandum is in response to questions that have arisen regarding the interpretation of the Southern Arizona Water Rights Settlement Act (SAWRSA), Pub. L. No. 96-293, Title III, 96 Stat. 1274 (1982). In order to proceed with the implementation of SAWRSA, the Department requires legal guidance on the nature of the rights in, and authority over, settlement water enjoyed by certain allottees of San Xavier District[1] (allottees) and the Tohono O'odham Nation (Nation).[2]

In considering this matter, I examined the legislative history of SAWRSA, available information on the history of the Tohono O'odham Nation, and relevant case law pertaining to allottee water rights. In addition, I solicited and reviewed comments from both the allottees and the Nation on these issues of significant importance to them. I also received and considered several other helpful comments on an earlier letter to members of Congress addressing these issues. Letter from Solicitor to Senators McCain and DeConcini, Senator-elect Kyl, and Congressmen Kolbe and Pastor, all of Arizona (Dec. 22, 1994).

I conclude that, with the limited exception of the right to convey settlement water, neither the text of SAWRSA nor its legislative history resolves the fundamental issue of relative entitlements of the Nation and the allottees to settlement water.

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[1] The "San Xavier District," a political subdivision of the Tohono O'odham Nation, is coterminous with the "San Xavier Reservation" and the terms are used interchangeably. Of all the lands within the Tohono O'odham Nation, only the San Xavier Reservation was significantly allotted.

[2] The basic question presented here involves the relationship between the Tohono O'odham Nation and the allottees. Nothing in this Opinion addresses or is intended to provide guidance on the respective water rights or jurisdictional authority of Indian tribes vis-a-vis states or non-Indians.

Accordingly, the legal interests of the Nation and the allottees under SAWRSA must be what each has under legal principles generally applicable to federal Indian reserved water rights. The basic attributes of tribal and allottee interests in such water rights are as follows:

1. An Indian allottee has a right to a "just and equal distribution" of water for irrigation purposes. Rep 7

2. Indian tribes possess broad regulatory power over reservation water resources, including those to which allottees have rights. p 9

3. The quantity of water to which an allottee may be entitled is not subject to precise formulae. p. 11)

I. BACKGROUND

A. SAWRSA

The Southern Arizona Water Rights Settlement was enacted to resolve Indian water rights claims arising within the San Xavier and Shuk Toak Districts of the Tohono O'odham Nation (formerly the Papago Tribe). The rights granted under SAWRSA were intended "to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water)" within these two Districts.[3]

Briefly, SAWRSA provides that in exchange for waiver and release of existing and future Indian water rights claims: (1) the United States will deliver Central Arizona Project (CAP) or other replacement water to the San Xavier and Shuk Toak Districts; (2) the United States will bear the cost of rehabilitating or constructing irrigation systems to put the water to use; and (3) a limited measure of groundwater within the Districts may be withdrawn for use each year.

B. The Positions of the Nation and the Allottees

Since SAWRSA is, for the most part, silent on the manner in which these benefits are to be allocated, certain allottees of the San Xavier District and the Tohono O'odham Nation have advanced substantially different interpretations of their respective settlement entitlements. This disagreement has been a principal cause of an unfortunate delay in the implementation of SAWRSA. The result has been that many of the benefits of the settlement have not been realized within the time frames originally contemplated by Congress.

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[3] SAWRSA, section 307(e). The legislation did not settle all water rights claims within the Tohono O'odham Nation. Claims in the Sif Oidak, Gu Achi, and Hickwan Districts remain at issue in the ongoing Gila River general stream adjudication.

The key issue requiring resolution is the nature of the rights in, and authority over, settlement water enjoyed by the allottees and the Nation. While the allottees and the Nation agree that their respective interests in groundwater were unaffected by SAWRSA, they disagree on other matters. The respective positions of the allottees and the Nation may be summarized as follows:

> The allottees contend that because the CAP or other replacement water provided by the settlement is a substitute for federal Indian reserved water rights appurtenant to allotted land, their property interests in that water must be equivalent to the rights they held in reserved water. They believe they are entitled to a ratable share of all settlement water (both confirmed groundwater rights and replacement water) based upon their ownership of practicably irrigable acreage within the San Xavier District. In their view, they have the right to use, lease, and otherwise exercise control over this water.
>
> The Nation contends that the right to use all surface water and groundwater within the boundaries of the Nation, including the replacement water provided by SAWRSA, is held by the Nation for the benefit of its members. The Nation further contends that section 306 of SAWRSA[4] expressly gives the Nation the right to lease and otherwise control all settlement water regardless of whether it is pumped from the ground or delivered by the United States as replacement water.

C. Reservation History

By Executive Order dated July 1, 1874, President Grant set aside approximately 71,000 acres in Arizona for the Papago Indian Reserve (commonly referred to as the San Xavier Reservation or the San Xavier District) "for the use of the Papago and such other Indians as it may be desirable to place thereon." 1 Charles J. Kappler, Laws and Treaties 805-06 (2nd ed. 1904). While the San Xavier Reservation itself has never been expanded, additional non-contiguous lands totaling approximately 2,774,370 acres were set aside for Papago Indians by several executive orders and acts of Congress between 1916 and 1939. These lands are commonly referred to as the "Papago Reservation" or the "Sells Papago Reservation." Both

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[4] 96 Stat. at 1279-80. The most pertinent passage is found in section 306(c)(1), which reads, in part:

> The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use ... whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

the San Xavier and Sells Papago Reservations are included within the territory of the Tohono O'odham Nation, a federally recognized Indian tribe operating under a constitution adopted on January 18, 1986, and approved by the Secretary on March 6, 1986, pursuant to 25 U.S.C. § 476. The Tohono O'odham Nation currently has approximately 18,538 members.

In 1890, when the San Xavier Reservation had approximately 363 residents, allotment commenced pursuant to the General Allotment Act, ch. 119, 24 Stat. 388 (1887) (codified as amended at 25 U.S.C. §§ 331-334, 339, 341, 342, 348, 349 & 381 (1982)). Between 1890 and 1917, the United States issued 292 trust allotments on the Reservation.[5] Approximately 85 consisted of "arable" lands; the remainder were timber or mesa lands. The mesa lands were viewed as suitable only for grazing purposes. Annual Report of the Commissioner of Indian Affairs, 1893, 117-19. Approximately 41,566 acres were allotted, of which "arable" allotted lands comprised approximately 2289 acres. The "arable" allotments were grouped together around the Santa Cruz River in the northeast corner of the Reservation.

Even prior to non-Indian contact, the Tohono O'odham were an agricultural people. Historic records of farming in the San Xavier area date to at least the early 1700s. When allotment commenced in 1890, 400 acres were irrigated on the Reservation. By the turn of the century, irrigation had expanded to 1000 acres. Originally, the allotments were irrigated with water from the Santa Cruz River, but non-Indian development adjacent to the Reservation soon began to deplete the flow of the river. By the early 1900s, the allottees began to withdraw and use groundwater. For a time, combined use of groundwater and surface water allowed farming to continue. According to Bureau of Indian Affairs records, irrigated lands on the Reservation reached a maximum of 1781 acres in 1926. (If fallowing practices are taken into consideration, the maximum acreage may have been as high as 2100 acres.) In the 1940s Reservation farming went into a decline when, again due to non-Indian off-reservation development, groundwater supplies beneath the Reservation were depleted. The combined depletion of both surface water and groundwater supplies made Indian farming virtually impossible by the late 1970s.

In 1975, the United States filed suit in federal district court on behalf of the Tribe and the heirs of the original allottees of the San Xavier Reservation. The case, United States v. City of Tucson, Civ. 75-39 TUC-JAW (D. Ariz.), named the City of Tucson and over a thousand other non-Indian water users as defendants and sought to establish and protect the water rights of the Tribe and allottees.

Congress' enactment of SAWRSA seven years later was intended to resolve the claims made by the United States on behalf of Indians in City of Tucson so that the case could be dismissed. The case is still pending because the San Xavier allottees have opposed dismissal on account of their continuing concern about the adequacy of the benefits provided them

[5] At present approximately 1275 Indians, most of whom are members of the Nation, hold interests in allotments on the Reservation.

under SAWRSA,

II. ANALYSIS OF THE PROVISIONS OF SAWRSA

SAWRSA's legislative history shows that the purpose of the settlement was to "provide a fair and reasonable settlement of the water rights claims of the San Xavier Papago Indian Reservation and the Schuk Toak District of Sells Papago Reservation with a minimum of social and economic disruption to the Indian and non-Indian communities in Tucson and eastern Pima County, Arizona." H.R. Rep. 855, 97th Cong., 2d Sess. 37 (1982).

Unfortunately, in fashioning SAWRSA little attention was paid to questions that have now become critical to its implementation--the nature of the rights in, and authority over, settlement water enjoyed by the allottees and the Nation. The answers are, of course, integral to determining how settlement benefits are to be allocated between the Nation and the allottees.

Several provisions of SAWRSA address the rights of the "Papago [sic] Tribe:" e.g., §§ 303(c); 306(a),(c); 309. Numerous statements in the legislative history refer to the "Tribe's claims" and the "Tribe's water rights;" e.g., H.R. Rep. 855, 97th Cong., 2d Sess. 37, 39-41, 43,47 (1982). With the exception of section 306(c), which speaks of the Nation's right to convey settlement water rights,[6] however, none of these provisions or statements directly addresses the question of relative entitlements of the Nation and the allottees to settlement water.

Indeed, the weight that might be given to SAWRSA's references to "tribal" rights is counterbalanced by the qualification in section 307(e) that the benefits of the settlement are to flow not only to the Tribe, but also to "all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation...."[7] Although section 307(e) does not utilize the term "allottees," allottees are the only individuals having "legal interest[s] in lands of the San Xavier Reservation."[8] I must conclude, therefore, that neither the text of

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[6] See footnote 4, supra, and accompanying text. Section 306(c)(1) is discussed in more detail further below.

[7] Section 307(e) also says that the settlement "shall be deemed to fully satisfy" all water right related claims of such tribal members, and that "[a]ny entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title."

[8] A literal reading of section 307(e) would limit settlement benefits to only those allottees who are members of the Tohono O'odham Nation. In fact, a small number of Indians holding trust interests in allotted lands on the Reservation are not members of the Nation. (Congress ought to consider deleting the requirement of Tohono O'odham

SAWRSA nor its legislative history resolves the fundamental issue.

The replacement water and other benefits provided by SAWRSA were intended to be a substitute for federal Indian reserved water rights. Accordingly, in the absence of Congress expressly settling the question in SAWRSA, the legal interests of the Nation and the allottees under SAWRSA must be generally what each enjoyed under legal principles generally applicable to federal Indian reserved water rights.[9] Put another way, I interpret SAWRSA to leave intact the basic nature of the interests in water held by the Nation and the allottees prior to enactment of SAWRSA.

III. GENERAL PRINCIPLES OF INDIAN LAW

The basic attributes of tribal and allottee interests in water are as follows:

> A. An Indian allottee has a right to a "just and equal distribution" of water for irrigation purposes.

The allottees and the Nation claim competing rights to use and control settlement water received in satisfaction of federal Indian reserved water rights. The General Allotment Act secured water to allottees where necessary for farming. Section 7, 25 U.S.C. § 381,[10] the

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membership as a condition to receiving settlement benefits, for there does not seem to be any reason to deny the benefits of settlement water to other Indians holding trust interests in lands on the Reservation.) There is minimal non-Indian ownership of formerly allotted lands on the Reservation. It is my understanding that two parcels of allotted land passed into fee status when they were sold to non-Indians in 1909. In addition, some undivided fractional interests in allotments have passed into non-Indian ownership by virtue of inheritance. It is not necessary to address here the nature of the rights held by non-Indians in formerly allotted lands, see Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1981), because SAWRSA does not purport to settle or otherwise affect such rights. In this respect, SAWRSA is consistent with the general approach followed by the United States in water rights litigation and settlement. Because the United States has no trust responsibility for, and holds no legal title to, non-Indian water rights, we do not assert claims for such rights and have no authority to compromise them in settlement.

[9] The general rule is that the United States may, as trustee, substitute one form of trust asset for another as long as the value of the assets is approximate. See, e.g., Three Tribes of the Fort Berthold Reservation v. United States, 390 F.2d 686 (D.C. Cir. 1968).

[10] This section provides:

> In cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for

only part of the Act expressly to address water, directs the Secretary to ensure a "just and equal distribution" of water among the resident Indians for irrigation purposes. In the context of the General Allotment Act, this clearly means or at least includes allottees. In United States v. Powers, 305 U.S. 527, 532 (1939), the Supreme Court interpreted section 7 to entitle allottees to water: "[W]hen allotments of land were duly made for exclusive use and thereafter conveyed in fee, the right to use some portion of tribal waters essential for cultivation passed to the owners." Therefore, the allottees' claim to a share of reserved water rights and, accordingly, settlement water rights, is accurate, at least as far as agricultural irrigation is concerned.

A basic standard for quantifying federal Indian reserved water rights is the amount of water necessary to irrigate the "practicably irrigable acreage" on the reservation. See Arizona v. California, 373 U.S. 546 (1963). Particularly where, as here, Indian water rights claims are settled by negotiation and congressional legislation rather than by final court decree, the amount of water available to Indians under the settlement may not reflect the amount of practicably irrigable acreage on the reservation. Accordingly, an allottee's share may not be sufficient to irrigate all practicably irrigable allotted acres.

It is also beyond dispute that allottees have the right to lease the water to which they are entitled, at least for use on the allotted land as part of an otherwise authorized lease of that land. See Skeem v. United States, 273 F. 93 (9th Cir. 1921).[11] Tribal consent is not necessary for such leases.

On the other hand, as discussed in the next section, a tribe may, among other things, regulate and perhaps proscribe uses of natural resources, including water, over which it has regulatory jurisdiction. See generally Brendale v. Confederated Tribes and Bands of the Yakima Nation, 492 U.S. 408 (1989). This includes water uses by allottees or their lessees.

> agricultural purposes, the Secretary of the Interior is authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservation; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

[11] Skeem addressed 25 U.S.C. § 403, which authorizes short term leases of allotted land. Since Skeem was decided in 1921, Congress has enacted a more comprehensive statute authorizing longer term leases, 25 U.S.C. § 415, which applies to most reservations. Leasing on the San Xavier Reservation is covered by 25 U.S.C. § 416, which is virtually identical to section 415 except for some special provisions owing to the proximity of the land to a major urban center. These are not relevant to the issue being addressed here, and the holding of Skeem applies to section 416 as well as 415.

Tribal sovereign power over water may be particularly important, and given particular deference, in the desert environment of the Tohono O'odham Nation.

It might be argued that 25 U.S.C. § 415 or § 416 authorizes allottees to lease water apart from allotted land, perhaps even off-reservation. This is by no means clear, however, and I have not yet had to resolve this issue because no lease raising it has been presented to the Department for approval. In acting on such a proposed lease I believe it appropriate to consider not only these statutes, but other federal law and any relevant tribal law.[12] A tribal prohibition of off-reservation water marketing by individuals, for example, would be entitled to great weight.

In the context of SAWRSA, however, I believe Congress has foreclosed the possibility of allottees marketing their right to use water off-reservation, for I read section 306(c)(1) as providing the Nation with exclusive marketing authority over "all water supplies under this title, whether delivered by the Secretary or pumped by the tribe ...." 96 Stat. at 1280. See footnote 4, supra. While this subsection speaks of the Nation's right to control the use of water on or off-reservation, I believe its right to control on-reservation water use by agricultural allottees is constrained in ways discussed in the next section.

B. Indian tribes possess broad regulatory power over reservation water resources, including those to which allottees have rights.

The Nation maintains sovereign control over Reservation resources, including water, within the limits of federal law. The Nation's sovereign power to regulate the water use of those within its jurisdiction may be described as a form of "ownership" in much the same way that the individual states claim ownership of natural resources. That is, as the Supreme Court has noted, "ownership" of water can be described as a "fiction expressive in legal shorthand of the importance to its people that a State have the power to preserve and regulate the exploitation of an important resource." Sporhase v. Nebraska ex rel. Douglas, 458 U.S. 941, 951 (1982).[13]

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[12] The recently enacted American Indian Agricultural Resource Management Act (AIARMA), 25 U.S.C. §§ 3701-3715, 3741-3745 (1993), recognizes extensive tribal rights to control reservation agricultural resources, expressly including water resources. Section 102(a) of the AIARMA requires that the Secretary conduct all land management activities in accordance with tribal agricultural resource management plans and tribal law unless such compliance would be contrary to the Secretary's trust responsibility or is prohibited by federal law. 25 U.S.C. § 3712(a).

[13] The analogy between the rights of a tribe and those of a state is admittedly not perfect. For instance, Congress has imposed specific limits on a tribe's authority to deal with allottees' water rights, see, e.g., 25 U.S.C. § 381, discussed further below, but it has not so constrained the ability of a state to affect individual water users within its jurisdiction.

A tribe's sovereign power to regulate reservation resources continues to exist unless divested by Congress. United States v. Wheeler, 435 U.S. 313, 322-23 (1978); see Felix S. Cohen's Handbook of Federal Indian Law 230-32 (1982 ed.). While many in and out of Congress at the time of enactment of the General Allotment Act expected that tribes would eventually wither and disappear, nothing in the Act affirmatively divests Indian tribes of regulatory control over reservation water. Indeed, the cases interpreting section 7 of the Act recognize that both the tribes and the Secretary have regulatory control over allottee water use. See Colville Confederated Tribes v. Walton (Walton II), 647 F.2d 42, 52 (9th Cir. 1981); Colville Confederated Tribes v. Walton (Walton I), 460 F. Supp. 1320, 1332 (E.D. Wash. 1978). The tribes' regulatory power is similar to that possessed by states over appropriations of state "owned" water resources.

A tribe's sovereign power includes some authority to allocate water to allotments and to determine the parameters of its use (such as type, amount, required conservation measures, etc.)[14] But a tribe's regulatory authority is circumscribed by the command of section 7 of the General Allotment Act, that an allottee not be denied a "just and equal distribution" of irrigation water. 25 U.S.C. § 381, quoted in footnote 10, supra. While section 7 does not directly address tribal authority, it plainly makes the Secretary responsible for protecting the allottees' interest in agricultural water use. Therefore, the Secretary may, by promulgating federal regulations, preempt tribal regulation that would thwart allottee interests protected by this statute. In this respect, I agree with the view of the Claims Court in Grey v. United States, 21 Cl. Ct. 285, 299-300 (1990), aff'd, 935 F.2d 281 (Fed. Cir. 1991), cert. denied, 112 S. Ct. 934 (1992), to the extent it suggests that section 381 gives allottees a right to some available water.

The question has been raised whether an allottee's right to use water is derivative of the

---

In other respects, however, a tribe's sovereign authority over water on the reservation may be greater than that enjoyed by a state over water within its jurisdiction. Tribes may not, for example, be as constrained by the commerce clause as a state. Compare the Court's view of the dormant interstate United States Constitution's commerce clause limitation on states applied in Sporhase, supra, with its view of the Indian commerce clause in Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163 (1989).

[14] Of course, if allotted land is transferred to non-Indian ownership, determining the extent of tribal regulatory powers becomes more complicated. Compare Walton II, 647 F.2d. 42 (tribe has jurisdiction to regulate non-Indian water use in hydrologic system situated entirely within the boundaries of the reservation) with United States v. Anderson, 736 F.2d 1358 (9th Cir. 1984) (state has jurisdiction to regulate on-reservation non-Indian use of water in excess of tribal needs in hydrologic system originating and substantially flowing off-reservation). This complex issue is beyond the scope of our current discussion.

tribe's federal reserved water right, not only historically,[15] but also currently. If it is, then a congressional repeal of 25 U.S.C. § 381 might give rise to a tribal claim that it could freely divest allottees of any right to use available water (even apart from the Indian Civil Rights Act, discussed in the next paragraph). There is room to doubt this result. Section 381's command of a "just and equal distribution" of water was part of the General Allotment Act that gave rise to individual property interests in reservation land, and thus it might be viewed as vesting a right to a "just and equal distribution" of agricultural water in the allottee. So long as section 381 exists, however, there is no need to resolve this question.

Congress has also constrained tribal authority to regulate reservation resources, including water rights, by the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1301-1303. Section 1302(5) prohibits an Indian tribe exercising powers of self-government from "tak[ing] any private property for a public use without just compensation." I believe that, at least so long as section 381 is in force, an agricultural allottee's interest in irrigation water may properly be considered "private property" for purposes of this section. This is not necessarily to say that such interests would constitute private property under the Fifth Amendment. See United States v. Jim, 409 U.S. 80 (1972). Whether allocations for uses other than irrigation may be characterized as private property under the ICRA is not so clear. See the discussion in the next section.

Questions concerning the extent to which a tribal government may regulate private property without crossing the line to a regulatory taking are not easily answered. It would seem that a tribal decision to deny an allottee the use of available water for agricultural use on lands allotted for farming purposes would be impermissible. Other situations may not be so clear, as analogous examples of state regulation of private property show. See, e.g., Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992). In one situation, however, Congress has acted to give (or confirm) sweeping authority in the Tohono O'odham Nation, i.e., controlling the export of water from the reservation. See the earlier discussion of section 306(c)(1) of SAWRSA.

C. The quantity of water to which an allottee may be entitled is not subject to precise formulae.

In Walton II, the Ninth Circuit expanded upon the Supreme Court's holding in Powers that allottees are entitled to share in reservation water resources by discussing several aspects of allottee water rights, including the amount of water to which an allottee is entitled. The measure of the right was determined to be based upon and limited by the number of

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[15] Federal Indian reserved water rights arise no later than the date of establishment of a reservation. Winters v. United States, 207 U.S. 564 (1908). A right to use water associated with an allotment created after the establishment and out of a reservation--the kind of allotment being addressed in this Opinion, as opposed to allotments created out of the public domain--is therefore appropriately described as "derivative" of the reservation water right.

practicably irrigable acres held by an allottee. 647 F.2d at 51. But Walton II also recognized that ownership of irrigable acreage does not guarantee the delivery of that full measure of water: "In the event there is insufficient water to satisfy all valid claims to reserved water, the amount available to each claimant should be reduced proportionately." Id.

Section 381's command of a "just and equal distribution" of agricultural water is necessarily dependent on the supply of water available upon any particular reservation. If sufficient water sources are available to satisfy all the purposes for which a reservation was established, each allottee should receive water sufficient to irrigate all practicably irrigable land allotted for agricultural purposes.

It is important to note, however, that only water necessary for irrigation is subject to "just and equal distribution" under section 381. See Joint Board of Control of the Flathead, Mission and Jocko Irrigation District v. United States, 832 F.2d 1127, 1131 (9th Cir. 1987) (criticizing lower court finding that all reservation waters are subject to equal distribution). Water reserved for fisheries or other purposes may not bear the burden of "equal" reduction. Although the Ninth Circuit first held in Walton II that all reservation uses (irrigation, fisheries, domestic, etc.) should in times of shortage be proportionately reduced, Walton II, 647 F.2d at 51; see also Colville Confederated Tribes v. Walton (Walton III), 752 F.2d 397, 405 (9th Cir. 1985), cert. denied, 475 U.S. 1010 (1986), subsequent Ninth Circuit decisions have retreated from that approach. See Joint Board of Control of the Flathead, Mission and Jocko Irrigation District v. United States, 832 F.2d 1127, 1131 (9th Cir. 1987); United States v. Adair, 723 F.2d 1395, 1416 n.25, (9th Cir. 1983), cert. denied sub nom. Oregon v. United States, 460 U.S. 1015 (1983). In these latter cases, pro rata reductions were avoided by the court's determination that the time immemorial priority date recognized for fisheries water was superior to the reservation establishment priority date recognized for agricultural water use.

Given the provisions of the General Allotment Act, the circumstances surrounding allotments on the San Xavier Reservation, and the history of water use on the Reservation, those allotments originally identified as arable and intended for farming have a stronger legal interest in settlement water than other allottees. Allotments created primarily for grazing, timber or other purposes may not receive the same measure of water vis-a-vis other reservation uses as those created for agricultural purposes.

I do not mean to suggest, however, that the principles applicable to the distribution of water secured by federal reserved Indian water rights among tribes and allottees in any way affects the standard for quantification of such rights in the first instance. When a reservation is established, water rights in an amount sufficient to accomplish the purposes of the reservation are impliedly reserved. Winters v. United States, 207 U.S. 564 (1908). Whether measured by the practicably irrigable acreage standard or otherwise, the aggregate reservation water right is neither reduced nor enlarged by subsequent federal actions distributing it among reservation Indians for particular purposes.

In sum, the history of allotments, the history of allottee water use, and the nature and type of other reservation interests in water all should inform the allocation and priority of allottee entitlements when there are insufficient supplies to meet all demands. This is, however, a complex matter and definitive determinations must be left for the future.

IV. CONCLUSION

The relative rights and authority held by allottees and tribes with respect to federal Indian reserved water is a complex area of law. Many questions must necessarily be addressed in the context of the facts unique to a particular reservation. The above discussion shows, however, that it is inaccurate to speak of either tribal governments or agricultural allottees as having plenary rights in water vis-a-vis each other. Agricultural allottees have rights tribes cannot wholly defeat; at the same time, tribes have regulatory authority over reservation water use from which allottees are not immune.

This Opinion was prepared with the substantial assistance of Pamela S. Williams and Daniel L. Jackson in the Office of the Solicitor, and was reviewed by more than a dozen attorneys in the Office with responsibility for Indian water rights issues.

Sen. Natural Res
EXHIBIT 33
DATE 6/15/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Representative Bill Eggers

For the Senate Natural Resources Committee

Prepared by Gregory Petesch
June 15, 1999 (12:30PM)

1. Page 6, line 12.
Following: "Reservation"
Insert: "in sufficient quantity to irrigate all practically irrigable acres within the basin"

2. Page 8, lines 7 through 10.
Following: "." on line 7
Strike: remainder of line 7 through line 10 in their entirety

3. Page 9, line 15.
Following: "legislature"
Insert: "until it demonstrates no harm to Tribal Groundwater resources"

4. Page 10, lines 5 and 6.
Following: "Basin" on line 5
Insert: "in sufficient quantity to irrigate all practically irrigable acres"
Following: "III," on line 5
Strike: remainder of line 5 through "any," on line 6

5. Page 11, line 4.
Following: "IV"
Insert: ", with violators of Section 2 of the Crow Allotment Act and nonfilers excluded"

6. Page 12, line 1.
Following: "land"
Insert: "after it demonstrates no harm to Tribal Groundwater

resources"
Strike: ":"

7. Page 12, line 2.
Strike: "(1)."

8. Page 12, lines 6 through 8.
Strike: subsection (2). in its entirety
Renumber: subsequent subsection

9. Page 13, lines 11 through 14.
Following: "." on line 11
Strike: remainder of line 11 through line 14 in their entirety

10. Page 14, line 9.
Following: "legislature"
Insert: "until it demonstrates no harm to Tribal Groundwater resources"

11. Page 15, lines 18 through 21.
Following: "." on line 18
Strike: remainder of line 18 through line 21 in their entirety

12. Page 17, line 3.
Following: "legislature"
Insert: "until it demonstrates no harm to Tribal Groundwater resources"

13. Page 18, lines 23 through 26.
Following: "." on line 23
Strike: remainder of line 23 through line 26 in their entirety

14. Page 19, line 22.
Following: "legislature"
Insert: "until it demonstrates no harm to Tribal Groundwater

resources"

15. Page 22, line 18.
Following: "**Water.**"
Insert: "The Tribe specifically reserves all Groundwater resources within the Reservation."

16. Page 23, line 25.
Following: "Right"
Insert: "and State-Based Water Rights granted to Tribal allottees for lands held in trust"

17. Page 24, line 12.
Following: "Law"
Insert: "except as to water rights appurtenant to Tribal allottee lands held in trust"

18. Page 24, line 21.
Following: "Law"
Insert: "except as to Indian water resources appurtenant to trust lands"

19. Page 25, lines 12 through 14.
Strike: subsection b. in its entirety
Renumber: subsequent subsection

20. Page 26, lines 2 through 7.
Strike: subsection a. in its entirety
Renumber: subsequent subsections

21. Page 31, line 4.
Strike: "Sections"
Insert: "Section"
Strike: "and C.1.b."

22. Page 31, line 11.
Strike: "C.1.c. and C.1.d."

Insert: "C.1.b. and C.1.c."

23. Page 34, lines 3 through 8.
Strike: subsection 2. in its entirety
Renumber: subsequent subsections

24. Page 37, line 13.
Following: "extend to"
Insert: "any Crow Tribal allottees"

- END -

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EX #34

Sen. Natural Res
exhibit 34
Date 6/15/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Representative Bill Eggers

For the Senate Natural Resources Committee

Prepared by Gregory Petesch
June 15, 1999 (9:14AM)

1. Page 37, line 23.
Following: "any"
Insert: "Crow allottee or"

- END -

WITNESS SHEET

IF YOU ARE GOING TO TESTIFY AT THE COMMITTEE HEARINGS, PLEASE PRINT YOUR NAME ON THE WITNESS SHEET.

Sen. Natural Resources 6/10/11 SB1

NAME	ADDRESS	REPRESENTING
John Chaffin	Billings MT	Crow Federal Negotiation Team
Joe Walksalongside	Lame Deer	Northern Cheyenne
Wanda Russell	Hodge (Mars)	Crow Nation Lands
[illegible] Jackson	Billings	NAPIL Fellow self
Darrell Hogan	Billings	Crow Land Owner
Jack Stilts	Hardin	DNRC
Ernie Robinson	Lame Deer	CCT
[illegible]	Box 30173 Bldg #187	Crow
Mike Not Afraid	Box 173 Crow Agency	Crow
Leroy Littlehead	Box 6911	Crow
Leila Frost	1406 Birch Billings	Crow tribe
LeRoy Not Afraid	Billings, MT.	Crow Tribe
Al Russell	Browning MT	Blackfeet
Pat Graham	Helena	Fish, Wildlife & Parks
David Fanning	Pryor, MT	Crow Tribe
Nancy Tucker	[illegible]	[illegible]

WITNESS SHEET

IF YOU ARE GOING TO TESTIFY AT THE COMMITTEE HEARINGS, PLEASE PRINT YOUR NAME ON THE WITNESS SHEET.

NAME	ADDRESS	REPRESENTING
Ben Cloggen	HOB	
Alan Small	Crow Agency	Crow Tribe
[illegible]	Bozeman	MT. Dan Bureau
[illegible]	Hardin	Senate
[illegible]	Hardin	Big Horn Water Users
[illegible]	[illegible]	CROW TRIBE
[illegible]	Pryor	Crow Tribe
Clara Nomee	Judge Nomee	Chairman Crow Tribal Court
[illegible]	[illegible]	[illegible]
VANCE ZIEMER	Bozeman	TROUT UNLIMITED
BRUCE TARLING	[illegible]	TROUT UNLIMITED
Tim Dolan	Livingston	RWRCC
Mike Duke	State Montana	HLR
[illegible]	Crow Agency MT.	Crow Tribe
Clara Nomee	[illegible]	[illegible]

WITNESS SHEET

IF YOU ARE GOING TO TESTIFY AT THE COMMITTEE HEARINGS, PLEASE PRINT YOUR NAME ON THE WITNESS SHEET.

NAME	ADDRESS	REPRESENTING
[illegible]	1871 Rimrock Rd Billings MT	DNRC
Stephanie Bradley	2024 3rd Ave N Bigem MT 59101	Crow Energy Corp
Bernard Cummins	PO Box 235 Lodge Grass	Crow Tribe
Bob Kelly	P.O. Box 28 Pryor, MT 59066	Crow Tribe
Chris Tweeten		Comput Communications
Joe Pitt		Crow Tribe
Jerry Jones		
Eunice [illegible]	Box 813 Busby MT 1406 Bench Blvd	Northern Cheyenne Ass Bridger Energy
[illegible]	Box 249,	Crow Tribe Indian Financial Services
JOE LAMSON	591, HLN 59620	NANCY KEENAN

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WITNESS SHEET

IF YOU ARE GOING TO TESTIFY AT THE COMMITTEE HEARINGS, PLEASE PRINT YOUR NAME ON THE WITNESS SHEET.

NAME	ADDRESS	REPRESENTING
John Bloomquist	Box 1185 Helena	Mt. Stockgrowers (Support SB1)
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Phillip Beaumont	P.O. Box Pryor, MT 59066	Crow Tribe
Faye Bergan	[illegible]	[illegible]
Urban I, Bear Don't Walk	P.O. Box 1593 Billings MT 59103	Crow Tribe

SENATE JOURNAL
FIRST LEGISLATIVE DAY
56TH LEGISLATURE
SPECIAL SESSION

Helena, Montana
June 15, 1999

Senate Chambers
State Capitol

Senate convened at 9:00 a.m. President Crippen presiding.

MESSAGES FROM THE GOVERNOR

To: Members of the Montana Senate
Members of the Montana House of Representatives
Secretary of State Mike Cooney
Members of the Montana Supreme Court c/o Clerk of the Court Ed Smith

PROCLAMATION
Call to the 56th Legislature for a Special Session

WHEREAS, Article V, Section 6 of the Montana Constitution and section 5-3-101, MCA, provide that the Legislature may be convened in special session by the Governor; and

WHEREAS, Article VI, Section 11, of the Montana Constitution provides that whenever the Governor considers it in the public interest, the Governor may convene the Legislature; and

WHEREAS, Indian Tribes in Montana have claimed rights to use water within Montana that are implied from acts of Congress, treaties or executive orders establishing tribal reservations, which rights are known as federal reserved water rights; and

WHEREAS, in 1979 the Montana Legislatutre created the Reserved Water Rights Compact Commission to negotiate water rights compacts with Indian Tribes, instead of litigating these complex and expensive cases in court; and

WHEREAS, to date water rights compacts have been reached between the State and the Fort Peck, Northern Cheyenne, and Rocky Boy Reservations; and

WHEREAS, the Crow Tribe and the State and Federal governments have been working cooperatively since 1994 to resolve water issues on the Crow Reservation, and in the fall of 1998 the Crow Tribe and the State began negotiations towards a comprehensive settlement that addressed water rights as well as a long-standing lawsuit over the State's imposition of coal severance taxes; and

WHEREAS, after public hearings and the opportunity for public comment, the Reserved Water Rights Compact Commission and the Crow Tribe have reached a proposed settlement on these issues; and

WHEREAS, the payment of settlement funds to resolve the coal severance tax litigation requires an appropriation from the Montana Legislature, and a water rights compact between the State and the Tribe must be ratified by the Montana Legislature; and

WHEREAS, it is in the public interest of all Montanans, in order to avoid further protracted litigation and negotiation of the water rights and coal severance tax issues with the Crow Tribe, to consider these issues at a special session of the Legislature;

NOW, THEREFORE, I, Marc Racicot, Governor of the State of Montana, pursuant to the authority vested in me by the Constitution and laws of the state of Montana do hereby call the Fifty-Sixth Legislature into Special Session in Helena, at O'Connell Hall at Carroll College at the hour of 9:00 A.M., the 15th and 16th of June, 1999, and hereby direct the Special Session of the Fifty-Sixth Legislature to consider action on the following:

1. Legislation to implement the Crow-Montana reserved water rights compact and provide for the payment of funds to the Crow Tribe in satisfaction of the State's obligations under the compact and in consideration of the Tribe's agreement to release certain claims against the State.

2. Any appropriations necessary for the legislative session.

Dated this 1st day of June, 1999.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Montana to be affixed. **DONE** at the City of Helena, this 1st day of June, in the year of our Lord, one thousand nine hundred and ninety nine.

MARC RACICOT
Governor

Invocation by Reverend Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present except Senators Franklin, Holden and Roush, excused.

MOTIONS

Senate Majority Leader Harp moved that the rules of the 56th Legislature, as amended by the Joint Senate/House Rules Committee and the Senate Rules Committee on June 14, 1999, be the rules of the special session of the 56th Legislature. Motion carried.

PROPOSED TEMPORARY JOINT RULES FOR SPECIAL SESSION

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(i) amend;

(ii) recommend passage or nonpassage;

(iii) recommend concurrence or nonconcurrence; or

(iv) indefinitely postpone.

(b) The text of all ~~proposed~~ adopted amendments must be recorded.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society.

SB 1, introduced by Cole and Stovall, referred to Natural Resources.

MESSAGES FROM THE OTHER HOUSE

Representatives R. Johnson, Masolo, Swanson and Quilici reported to the Senate that the House had convened in special session, is ready for business, and wished the Senate well in their deliberations.

REPORTS OF SELECT COMMITTEES

The committee appointed to notify the Governor that the Senate was organized and ready for business reported that the Governor extended his best wishes. The message was acknowledged and the committee dismissed.

The committee appointed to notify the Chief Justice and the associate members of the Supreme Court that the Senate was organized and ready for business reported that the Supreme Court had been notified. The message was acknowledged and the committee dismissed.

The committee appointed to notify the House of Representatives that the Senate was organized and ready for business reported that the House extended its best wishes. The message was acknowledged and the committee dismissed.

ANNOUNCEMENTS

Chairman Crismore announced a meeting of the Natural Resources Committee.

MOTIONS

Majority Leader Harp moved that the Senate stand in recess until 3:00 p.m. this day and that they proceed immediately to the Carroll Campus Center to meet in Joint Session to receive the Governor's message, and at the conclusion of the Joint Session, the Senate will reconvene at 3:00 p.m. this day. Motion carried.

JOINT SESSION OF THE 56TH LEGISLATURE-SPECIAL SESSION JUNE 15, 1999 - 9:30 A.M.

Majority Leader Harp moved that the President be authorized to appoint a committee of four to notify the Governor that we are in Joint Session and ready to receive his address. Motion carried. The President appointed Senator

Beck, Chairman, Senator Jergeson, Representative Rose and Representative Hurdle. The committee was discharged to escort the Governor to the Carroll Commons.

Sergeant-at-Arms Cramer announced that the committee escorting Governor Racicot awaited entrance to the Joint Session.

President Crippen directed Sergeant-at-Arms Cramer to escort the committee and Governor Racicot to the Joint Session.

Invocation by Reverend Keith Johnson, followed by the Pledge to Allegiance to the Flag.

President Crippen presented Governor Racicot to the Joint Session. Governor Racicot presented the following address:

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SENATE JOURNAL
FIRST LEGISLATIVE DAY - JUNE 15, 1999

Welcome back to college. And welcome to Session 56 point 5 of the Montana Legislature. This is a historic session for a number of reasons.

This is the 26th special session in our special state's special history.

This is--as far as we can gather--the first session in nearly a century, held outside of the State Capitol Building, which, as you know is being renovated--not from anything that happened during the regular session, but because it is being prepared for yet another century of service to the people of this state.

I am going to be extremely brief this morning. We have some important work to do and we can't get to it if I am talking and you are stuck listening.

And, finally, I say historic because of the subjects at hand.

The Crow-Montana Water Compact is truly a historic opportunity for the Crow Tribe and the State of Montana. It is further proof of how the people in Montana can accomplish so much more by working together.

Last fall officials from the Crow Tribe approached Attorney General Mazurek and myself with a proposal for a comprehensive settlement of three important issues that have gone unresolved for decades: tribal water rights, coal severance tax litigation and Section 2 land ownership.

The Tribe hoped that a settlement package involving the first two issues could be brought to the 1999 regular session of the Legislature for approval.

Time and the need for public hearings did not permit that. But since December the Montana Reserved Water Rights Compact Commission and the Crow Tribe, working closely with federal negotiators, have engaged in intense negotiations on the water rights issues.

In April, the Tribe and Compact Commission finalized a compact which provides for a significant water right for the Tribe while protecting the rights of all existing water users.

At the same time, the Attorney General and I negotiated with the Tribe a final settlement of the contentious coal tax litigation, which has dragged on for so many years and so many dollars.

It is these two agreements that we bring to this special session gathered here today and tomorrow. This is the first step in an approval process that includes Congressional authorization, a Crow Tribe secret ballot referendum and ultimately approval by the Montana Water Court.

The Section 2 issue will be negotiated by the Tribe and United States and will be included in a Congressional settlement package.

Your hearings will learn of the specific details of these agreements later. Let me just say for now in brief that the Compact provides water from surface flow, groundwater and storage for the Crow Tribe for existing and future needs, provides protection for all state and tribal current water users while protecting conservation districts' rights to future water.

It creates an administrative process for resolution of future disputes between Tribal and non-Tribal water users, closes certain basins to new water appropriations and authorizes the State to pay the Tribe $15 million for the Tribe's dismissal of the coal severance lawsuit and for the State's cost-share for the water rights settlement.

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While the State has, indeed, prevailed in recent court decisions on this issue, the Attorney General and I are in agreement that some potential liability does remain on the subject. And in the interests of economy, expeditious resolution of a longstanding dispute and our mutual interests in building positive future relationships, we agree that this settlement is the best for the people of Montana.

Well, that's it--two complex issues have been narrowed through good--faith negotiations to a pair of fairly simple decisions before you this week.

I hope--I trust--you will see fit to do the right thing for the mutual futures of Montana's peoples and approve these pacts.

By doing that, by approving these agreements in this historic special session, together, we can turn two perpetual points of division and debate over water resources into what they should quickly become: water under the bridge between our peoples.

Thank you. Good luck. God bless. And good day.

President Crippen thanked Governor Racicot for this remarks. He then introduced six year old Amos Bird Hat from Billings, son of Bob Kelly, Crow Tribe Water Rights Negotiator; and six year old Smith Wells from Helena, daughter of Faye Bergan, Legal Counsel for the Reserved Water Rights Compact Commission, who made a presentation to the Governor and Attorney General Mazurek.

Benediction was given by Reverend John Darragh, Administrator of the Diocese of Helena.

President Crippen recognized Bob Person, Director of Legislative Services Division, and thanked him for his efforts in planning this historic special session, and for all his help through the years as Director.

The committee escorted the Governor from the Joint Session.

Committee chairmen announced committee meetings that would follow the joint session.

Majority Leader Harp moved that the Joint Session of the 56th Legislature be adjourned. Motion carried.

Senate reconvened at 3:00 p.m.

Roll call. All members present except Senators Cocchiarella, Cole, Crismore, Franklin, Grosfield, Keating, Mahlum, McCarthy, Miller, Roush, Taylor and Wilson, excused.

COMMUNICATIONS AND PETITIONS

June 15, 1999

The Honorable Marc Racicot
Governor
State of Montana
Helena, MT 59620

The Honorable Bruce Crippen
President of the Senate

2nd Reading (Committee of the Whole)

SB 1 - Senator Cole moved SB 1 do pass. After introduction of SB 1, Senator Holden moved SB 1 be amended as follows:

1. Page 9, line 8.
Following: "."
Insert: "The streamflow and lake level management plan must be submitted to and approved by the Montana legislature before the Compact is submitted to Congress."

2. Page 9, line 12.
Following: "State"
Insert: "if the change is consistent with the plan approved by the Montana legislature."

3. Page 42, line 10.
Following: "State"
Insert: "after approval by the Montana legislature.

Amendment **failed** as follows:

Yeas: Bishop, Doherty, Holden, Wells.
Total 4

Nays: Bartlett, Beck, Berry, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Eck, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Waterman, Wilson, Mr. President.
Total 45

Absent or not voting: None.
Total 0

Excused: Roush.
Total 1

SB 1 - passed as follows:

Yeas: Bartlett, Beck, Berry, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Eck, Ekegren, Ellingson, Ellis, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Sprague, Stang, Swysgood, Tester, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.
Total 44

Nays: Bishop, Doherty, Franklin, Holden, Taylor.
Total 5

Absent or not voting: None.
Total 0

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Excused: Roush.
Total 1

Senator Harp moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Crippen in the chair. Chairman Crippen moved the Committee of the Whole report be adopted. Report adopted unanimously.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 1 passed as follows:

Yeas: Bartlett, Beck, Berry, Bohlinger, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Eck, Ekegren, Ellingson, Ellis, Glaser, Grimes, Grosfield, Halligan, Hargrove, Harp, Hertel, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Tester, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.
Total 45

Nays: Bishop, Doherty, Franklin, Holden, Taylor.
Total 5

Absent or not voting: None.
Total 0

Excused:0

Paired Votes: Yeas: Roush Nays: Holden

SB 2 as amended passed as follows:

Yeas: Bartlett, Beck, Berry, Bishop, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Devlin, Doherty, Ekegren, Ellingson, Ellis, Franklin, Glaser, Grimes, Halligan, Harp, Hertel, Holden, Jabs, Jergeson, Keating, Keenan, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Tester, Thomas, Toews, Wells, Wilson, Mr. President.
Total 45

Nays: Bohlinger, Eck, Grosfield, Hargrove, Waterman.
Total 5

Absent or not voting: None.
Total 0

Excused:0

Paired Votes: Yeas: Roush Nays: Eck

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - SPECIAL SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on June 16, 1999 at 9:00 A.M., in Room 107, O'Connell Hall, Carroll College, Helena, Montana.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 1, 6/16/1999
Executive Action: SB 1

HEARING ON SB 1

Opening Statement by Sponsor:
SEN. MACK COLE, SD 4, presented SB 1.
{Tape : 1; Side : A; Approx. Time Counter : 17 - 121; Comments : Before and after Opening Statement, Chairman Tash instructed the members and witnesses as to the hearing procedure for this bill.}

Introduction:
Chairwoman, Crow Tribe, Clara Nomee EXHIBIT(1)
{Tape : 1; Side : A; Approx. Time Counter : 121 - 423; Comments: Chairman Tash limited testimony on each side to 1 hour, 10 minutes for each witness.} EXHIBIT(2)

Informational Testimony:
Chris Tweeten, Chairman, Reserved Water Rights Compact Commission
{Tape : 1; Side : A; Approx. Time Counter : 397 - Side : B; Approx. Time Counter : 24}

Faye Bergan, Legal Counsel, DNRC, Reserved Water Rights Compact Commission EXHIBIT(3)
EXHIBIT(4)
EXHIBIT(5)
EXHIBIT(6)
EXHIBIT(7)
EXHIBIT(8)
EXHIBIT(9)
EXHIBIT(10)
{Tape : 1; Side : B; Approx. Time Counter : 24 - 201; Comments : Chairman Tash gave further instruction to the committee.}

Proponents' Testimony:
Joe Mazurek, Attorney General
{Tape : 1; Side : B; Approx. Time Counter : 201 - 308}

Jack Stults, DNRC

{Tape : 1; Side : B; Approx. Time Counter : 308 - 434}

Ernie Robinson, Northern Cheyenne Tribal Council
{Tape : 1; Side : B; Approx. Time Counter : 434 - 500}

Clint McFarland, Supervisor Yellowstone Conservation Board
{Tape : 2; Side : A; Approx. Time Counter : 17 - 27}

Cedric Black Eagle, Water Right Conservation Team
{Tape : 2; Side : A; Approx. Time Counter : 27 - 60}

David Turns Plenty, Jr., Crow Tribe
{Tape : 2; Side : A; Approx. Time Counter : 60 - 111}

Pat Graham, Director, Department of Fish, Wildlife and Parks
*{Tape : 2; Side : A; Approx. Time Counter : 111 - 185}*EXHIBIT(11)

Dennis Big Hair, Sr., Crow Tribal Secretary
{Tape : 2; Side : A; Approx. Time Counter : 185 - 271}

Laura Ziemer, Trout Unlimited
{Tape : 2; Side : A; Approx. Time Counter : 271 - 342}

Harold Stanton, Attorney, Hardin, Montana
{Tape : 2; Side : A; Approx. Time Counter : 342 - 408}

James Korski, Attorney, Hardin, Montana
{Tape : 2; Side : A; Approx. Time Counter : 408 - 500}

Jerry Jones, Bighorn Livestock Association EXHIBIT(12)
{Tape : 2; Side : B; Approx. Time Counter : 1 - 14} EXHIBIT(13)

Eloise Pease, Crow Tribe
{Tape : 2; Side : B; Approx. Time Counter : 14 - 59}

Bob Kelly, Crow Tribe EXHIBIT(14)
{Tape : 2; Side : B; Approx. Time Counter : 59 - 149}

Twila Frost, Crow Tribe
John Bloomquist, Montana Stockgrowers
Dan Scott, Crow Leaseholders Association EXHIBIT(15)
EXHIBIT(16)

Pat Riley
Bernard Cummins, Crow Tribe
Senator Reiny Jabs

Joe Lamson, Office of Public Instruction
Representative Lila Taylor
Phil Beaumont, Sr., Crow Tribe
Art Alden, Jr., Crow Tribe EXHIBIT(17)
Charlene Laverdure
Cornelius Little Light
Tyrone Ten Bear, Crow Tribe
Representative Monica Lindeen
Linda Little Light, Crow Tribe
{Tape : 2; Side : B; Approx. Time Counter : 149 - 309; Comments : The above listed witnesses gave their names only. Exhibit 18 was submitted without testimony.} EXHIBIT(18)

Opponents' Testimony:
Rep. Bill Eggers
{Tape : 2; Side : B; Approx. Time Counter : 309 - Tape : 3; Side: A; Approx. Time Counter: 22}

Leroy Not Afraid, Crow Tribe
{Tape : 3; Side : A; Approx. Time Counter : 22 - 130}

Gerald Red Wolf, Crow Tribe
{Tape : 3; Side : A; Approx. Time Counter : 130 - 167}

John Chaffin, Depaartment of Interior EXHIBIT(19)
{Tape : 3; Side : A; Approx. Time Counter : 167 - 369}

Rep. Eggers
{Tape : 3; Side : A; Approx. Time Counter : 369 - 500}

Informational Testimony: None.

Questions from Committee Members and Responses:
{Tape : 3; Side : B; Approx. Time Counter : 2 - Tape : 4; Side : B; Approx. Time Counter : 344}

Closing by Sponsor:
{Tape : 4; Side : B; Approx. Time Counter : 344 - 385}

EXECUTIVE ACTION ON SB 1

Motion: **REP. YOUNKIN** moved that **SB 1 BE CONCURRED IN.**

Discussion:
{Tape : 4; Side : B; Approx. Time Counter : 385 - Tape : 5; Side : A; Approx. Time Counter : 4}

Motion: **REP. HARPER** moved that **SB 1 BE AMENDED.** **EXHIBIT(20)**

Discussion:
{Tape : 5; Side : A; Approx. Time Counter : 4 - 210}

Vote: Motion **carried 12-8**. ROLL CALL VOTE #1.

Motion: **REP. EGGERS** moved that **SB 1 BE AMENDED.** **EXHIBIT(21)**

Discussion:
{Tape : 5; Side : A; Approx. Time Counter : 210 - Side : B; Approx. Time Counter : 25}

Vote: Motion **failed 8-12**. ROLL CALL VOTE #2.

Motion/Vote: It was moved that **SB 1 BE CONCURRED IN AS AMENDED.** **Motion carried 14-6**. ROLL CALL VOTE #3.

Motion/Vote: **It was moved to adjourn. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 1:40 P.M.

Bill Tash
REP. BILL TASH, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BT/jg

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

NATURAL RESOURCES COMMITTEE

DATE 6/16/99 BILL NO. SB1 NUMBER 1

MOTION: Harper Amendment 109.agp

NAME	AYE	NO
REP. CINDY YOUNKIN, VICE CHAIR	✓	
REP. HAL HARPER, VICE CHAIR	✓	
REP. ROD BITNEY		✓
REP. AUBYN CURTISS		✓
REP. RICK DALE		✓
REP. BILL EGGERS	✓	
REP. RON ERICKSON	✓	
REP. DAVID EWER	✓	
REP. GAIL GUTSCHE	✓	
REP. JOAN HURDLE	✓	
REP. DAN MC GEE	✓	
REP. DOUG MOOD		✓
REP. KARL OHS		✓
REP. SCOTT ORR	✓	
REP. BOB RANEY	✓	
REP. ROBERT STORY		✓
REP. JAY STOVALL		✓
REP. CARLEY TUSS	✓	
REP. DOUG WAGNER	✓	
REP. BILL TASH, CHAIRMAN		✓

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

NATURAL RESOURCES COMMITTEE

DATE 6/16/99 BILL NO. SB1 NUMBER 2

MOTION: Eggers Amendment 102.agp

NAME	AYE	NO
REP. CINDY YOUNKIN, VICE CHAIR		✓
REP. HAL HARPER, VICE CHAIR		✓
REP. ROD BITNEY		✓
REP. AUBYN CURTISS	✓	
REP. RICK DALE		✓
REP. BILL EGGERS	✓	
REP. RON ERICKSON	✓	
REP. DAVID EWER		✓
REP. GAIL GUTSCHE	✓	
REP. JOAN HURDLE	✓	
REP. DAN MC GEE		✓
REP. DOUG MOOD		✓
REP. KARL OHS		✓
REP. SCOTT ORR	✓	
REP. BOB RANEY	✓	
REP. ROBERT STORY		✓
REP. JAY STOVALL		✓
REP. CARLEY TUSS	✓	
REP. DOUG WAGNER		✓
REP. BILL TASH, CHAIRMAN		✓

8 12 241

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

NATURAL RESOURCES COMMITTEE

DATE 6/16/99 BILL NO. SB1 NUMBER 3

MOTION: Do Pass as Amended

NAME	AYE	NO
REP. CINDY YOUNKIN, VICE CHAIR	✓	
REP. HAL HARPER, VICE CHAIR	✓	
REP. ROD BITNEY	✓	
REP. AUBYN CURTISS		✓
REP. RICK DALE	✓	
REP. BILL EGGERS		✓
REP. RON ERICKSON	✓	
REP. DAVID EWER	✓	
REP. GAIL GUTSCHE		✓
REP. JOAN HURDLE	✓	
REP. DAN MC GEE	✓	
REP. DOUG MOOD	✓	
REP. KARL OHS	✓	
REP. SCOTT ORR		✓
REP. BOB RANEY		✓
REP. ROBERT STORY	✓	
REP. JAY STOVALL	✓	
REP. CARLEY TUSS	✓	
REP. DOUG WAGNER		✓
REP. BILL TASH, CHAIRMAN	✓	

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EXHIBIT 1
DATE 6/16/99
SB 1

Testimony of Madam Chairman Clara Nomee

In Support of Senate Bill 1 and

House Bill 2

Before the Senate and House Natural

Resources Committees, the Senate

Finance and Claims Committee

and the House Appropriations

Committee

Special Session of the Montana

Legislature

June 15 and 16, 1999

My name is Clara Nomee. I am the Madam Chairman of the Crow Tribe. As the duly elected Chairman of the Crow Tribe, I am here to convey the strong, in fact, the unanimous support of the Crow Tribal Council for the enactment of the bills to settle the water rights and coal severance tax issues between the Crow Tribe and the State of Montana. The passage of these two bills would also make possible and set the stage for the settlement of the almost 80 year old dispute involving Section 2 of the 1920 Crow Allotment Act with the United States.

For those of you who may not be familiar with the Crow tribal government, I want to briefly explain its structure. The Crow Tribal Council is the official voice of the Crow Tribe under our Constitution which was approved in 1949, fifty years ago. The Crow Constitution states that the Tribal Council is the medium, the body, the tribal organization through which the Crow Tribe speaks to the governments and the general public. The Tribal Council consists of all adult enrolled members of the Crow Tribe. It holds regular meetings four times a year, in January, April, July and October. The Tribal Council sets the rules and policies of the Crow Tribe through the adoption of resolutions by majority vote.

The Tribe holds elections every two years for four elected officials, Chairman, Vice-Chairman, Secretary and Vice-Secretary. The four officials conduct the Tribal Council meetings,

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administer the tribal government, present resolutions to the Tribal Council and carry out the Tribal Council's resolutions.

At the last Tribal Council meeting on April 10, before anyone knew that Governor Racicot would call a special session of the Montana legislature, the Tribal Council unanimously adopted Resolution No. 99-33. Resolution No. 99-33 states:

> The Crow Tribal Council calls on the Montana legislature to enact legislation before the close of its 1999 session approving the proposed settlement of the water rights and coal severance tax issues supported by the Crow Tribal Administration, the Crow Negotiating Team and the Governor and Attorney General of the State of Montana; provided that it is clearly understood by all parties that no part of the settlement will take effect or be binding on the Crow Tribe unless and until the complete package settlement of all three issues is first approved by Congress and the Secretary of the Interior and is then approved by vote of Crow tribal members through a secret ballot process in accordance with the terms of this resolution.

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That is the position of the Crow Tribe speaking through its only official voice, the Crow Tribal Council. That is the message I bring to you as the elected Chairman of the sovereign Crow Nation. It is also the position supported by all four tribal elected officials. Mr. Chairman, I would ask that Resolution No. 99-33 be made a part of the record of this Committee.

On behalf of the Crow Tribe, I want to express our appreciation to Governor Racicot and Attorney General Mazurek. We approached them last fall with something that had never been done before -- a proposal that would attempt to resolve at one time the three most difficult and important issues affecting the Crow Tribe and the Crow Reservation - water rights, coal severance tax and section 2. We knew that we had a very short time. Negotiating solutions to anyone of these issues usually take years, not months. We knew that the Governor and the Attorney General are from different parties. We knew that they would have to work together for the good of all the people of Montana. We knew and they knew that the odds were against us -- that it would take a minor miracle to reach the point we're at today and a full-fledged miracle for everything to happen by the end of 2000 when their terms are up. I believe in miracles. I thank the Governor and the Attorney General from the bottom of my heart for recognizing the unique and historic opportunity to resolve these critically important issues, for accepting the

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challenge of leadership, for having the courage to risk failing and for working together and putting aside their political differences. I especially want to thank Governor Racicot for calling this special session of the legislature to consider the proposed Crow/Montana settlement.

I also want to express the same appreciation to my fellow Crow politicians, Cedric Black Eagle and Barney Cummins, and to their Crow advisors, Urban Bear Don't Walk and Bob Kelly. Cedric and Barney ran against me for Tribal Chairman in 1998. They were the second and third highest vote-getters. Urban and Bob supported and campaigned for them. When I invited Cedric and Barney to join our negotiating team, and they asked me to include Urban and Bob, all four agreed. They also recognized the unique and historic opportunity to reach a settlement that would improve the lives of the Crow people for generations to come. They put aside their political differences with me and with my administration. They worked very hard. We shared all the information we had with them and they read and digested it all. They understood the issues and the stakes. We asked for their opinions and advice and we relied on what they said. They attended countless meetings as unpaid volunteers. They were criticized by some of their supporters and allies, accused of being sellouts. But they stuck to their guns and also accepted the challenge of being political leaders. I'm very proud to be standing here today with them and for them to be standing here

with me.

I hope that the members of the Montana legislature will do what Governor Racicot and Attorney General Mazurek did and what Cedric, Barney, Urban, Bob and I did -- put aside political differences and party affiliations and work together. Stand up for what is right. Help us make this miracle happen.

I also ask you to respect the sovereignty of the Crow Tribe, the voice of the Crow Tribal Council, the views of the elected officials and ultimately the result of the secret ballot vote of our tribal members. I have been elected Tribal Chairman in 5 successive elections. I've been blessed. I was the first and so far the only woman elected Chairman. I know my people and they know me. I can tell you that the vast majority of Crows support what we are doing and that they will vote to accept a fair and just settlement if the Montana legislature enacts these bills and our negotiations with the United States are successful. I know my people.

Please don't second guess us. Please don't reject these bills because you think you know what is best for us. We've had enough of that for 150 years. Also, please don't tell us how much the Tribe can win in the courts. We've been down that path and we know where it leads. Please let us decide what is best for us through our tribal political process and our secret ballot

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vote.

Finally, I hope you will look at the big picture and not get bogged down in all the details. Here is what the big picture will look like from the standpoint of the Crow people if the bills pending before the Montana legislature are enacted and our subsequent negotiations with the federal government are successful:

- we will have the opportunity to buy back our reservation land and water from willing sellers at a fair price and to secure our land base as our permanent tribal homeland;
- we will have the opportunity to protect our abundant and high quality coal from double taxes so that it can be developed to provide good high-paying jobs for tribal members and the Tribe will be able to keep all the tax revenues produced by our coal;
- we will have the opportunity to secure enough surface and groundwater to meet all of the Tribe's present and future needs;
- we will have the opportunity to be able to exercise our sovereign authority over the use of our surface and groundwater;
- we will have the opportunity to share the economic benefits from the blue-ribbon wild trout fishery in the

Bighorn River and to participate equally with the state and federal governments in the management of that resource;

- we will have the opportunity to obtain millions of dollars a year in revenues from the power produced at Yellowtail and downstream federal dams, just as the Salish and Kootenai Tribes on the Flathead Reservation have received the power revenues from Kerr Dam for more than 50 years;

- we will have the opportunity to avoid the time, expense and risks of litigation;

- finally, we will have the opportunity to heal old wounds and to establish new relationships with the federal government, the State of Montana and our non-Indian neighbors based on equality, trust and mutual respect.

I firmly believe that the settlement of the Crow water, coal severance tax and Section 2 issues would be the most significant event in the history of the Crow Tribe since the signing of the Second Treaty of Fort Laramie in 1868. It would enable the Tribe to become economically self-sufficient by utilizing our own natural resources. With the settlement, the Tribe will be able to provide essential services to our people, to greatly improve our quality of life and our standard of living and to preserve our tribal homeland and the culture of the Crow people. I pray

that you - the members of the last Montana legislature of this millennium - will not let this historic opportunity slip away from us.

Thank you very much.

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RESOLUTION NO. 99-33 Item #1 EXHIBIT 2
DATE 6/16/99
SB 1

A RESOLUTION PERTAINING TO SETTLEMENT NEGOTIATIONS AMONG THE CROW TRIBE, THE STATE OF MONTANA AND THE UNITED STATES INVOLVING WATER RIGHTS, COAL SEVERANCE TAX AND SECTION 2 ISSUES

WHEREAS, the Crow Tribe faces three major legal issues involving water rights, coal severance tax and section 2 of the 1920 Crow Allotment Act; and

WHEREAS, the resolution of these issues will significantly affect the future of the Crow Tribe for many generations to come; and

WHEREAS, thee Crow Tribal Administration, with the advice, assistance and cooperation of several members of the Crow Tribal Executive Committee, has been negotiating very intensively with representatives of the State of Montana and the United States for several months; and

WHEREAS, it is extremely important for the Crow Tribe to do everything it can to reach a tentative, fair and equitable settlement of the water rights and coal severance tax issues with the State of Montana in time for it to be approved by the Montana legislature before the end of its 1999 session; and

WHEREAS, there cannot be any final settlement of the water rights and coal severance tax issues until a package settlement of all three issues, water rights, coal severance tax and section 2, is first approved by Congress and then the entire negotiated settlement **proposal** is approved by vote of Crow tribal members through a secret ballot process after all of its terms have been fully explained to the entire voting membership; and

NOW, THEREFORE BE IT RESOLVED, that the Crow Tribal Council calls on the Montana legislature to enact legislation before the close of its 1999 session approving the proposed settlement of the water rights and coal severance tax issues supported by the Crow Tribal Administration, the Crow Negotiating Team and the Governor and Attorney General of the State of Montana provided that it is clearly understood by all parties that no part of the settlement will take effect or be binding on the Crow Tribe unless and until the complete package settlement of all three issues is first approved by Congress and the Secretary of the Interior and is then approved by vote of Crow tribal members through a secret ballot process in accordance with the terms of this resolution.

PASSED, ADOPTED, AND APPROVED By the Crow Tribal Council on the 10th day of April 1999, by unanimous voice votes for adoption and -0- votes against passage and adoption.

Dennis Big Hair, Sr.

Dennis Big Hair, Sr., Secretary
CROW TRIBAL COUNCIL

ATTEST:

Clara Nomee, Chairman
CROW TRIBAL COUNCIL

NOTED:

Gordon Jackson, Superintendent
BUREAU OF INDIAN AFFAIRS

AUTHOR: Crow Tribal Administration

EXHIBIT 3
DATE 6/16/99
SB 1

SB1
WATER COMPACT ENTERED INTO BY
THE STATE OF MONTANA,
THE CROW TRIBE,
AND THE UNITED STATES OF AMERICA

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EXHIBIT 4
DATE 6/14/99
SB 1

CROW-MONTANA WATER RIGHT-COAL SEVERANCE TAX SETTLEMENT (LC 1 AND LC 2) to be considered in a Special Session of the Montana Legislature June 15, 16, 1999

BACKGROUND of the SETTLEMENT

In the fall of 1998, officials from the Crow Tribe approached Governor Racicot and Attorney General Mazurek with a proposal for a comprehensive settlement of three important issues that have gone unresolved for decades: tribal water rights, coal severance tax litigation and "Section 2" land ownership. The Tribe hoped that a settlement package involving the first two issues could be brought to the 1999 Legislature for approval.

Since December, the Montana Reserved Water Rights Compact Commission and the Crow Tribe, working closely with the negotiating team for the United States, have engaged in intensive negotiations on the water rights issues. In April, the Tribe and the Compact Commission finalized a compact which provides for a significant water right for the Tribe while protecting the rights of all existing water users. At the same time, the Governor and Attorney General negotiated a final settlement of the contentious coal tax litigation. These two agreements will now be brought to a special session of the Montana Legislature for ratification, the first step in an approval process that will include Congressional authorization, a Crow tribal secret ballot referendum and ultimately approval by the Montana Water Court. The "Section 2" issue will be negotiated by the Tribe and United States and included in the Congressional settlement package.

CROW WATER RIGHTS COMPACT (LC 1)

In general, the compact:

- provides water from surface flow, groundwater and storage for the Crow Tribe for existing and future tribal water needs. (Article III)
- provides protection for all state and tribal current water users in the affected water basins from the Tribe's future exercise of its water rights; also protects the local conservation districts' right to future water use. (Article III)
- "closes" certain basins and sub-basins to new water appropriations under State law; small domestic and stock uses, as well as changes and transfers of water rights, can continue. (Article III)
- creates an administrative process for resolution of any future disputes between Tribal and non-Tribal water users. (Article IV)
- authorizes the State to pay the Tribe $15 million in consideration for the Tribe's dismissal of the coal severance lawsuit and for the State's "cost-share" for the water rights settlement. (Article VI)

IMPLEMENTATION OF THE CROW COAL SEVERANCE TAX SETTLEMENT AND WATER RIGHTS COMPACT (LC 2) AND STATE CONTRIBUTIONS TO SETTLEMENT

LC 1, the Crow Water Rights Compact, authorizes the State of Montana to pay the Crow Tribe $15 million in annual installments over a period of 10 years to a fund "dedicated to economic development and water and sewer infrastructure within the Reservation." The Compact makes it clear that the State is contributing this money to (1). settle the long-standing coal severance tax dispute and (2). provide the State's "cost-share" for settling the water rights of the Tribe.

LC 2 implements these two settlements. It authorizes the first two payments of $1.5 million in FY 2000 and $1.5 million in FY 2001 from the general fund. It provides that the funds will be paid into an escrow account. The funds, together with any interest earned, will be transferred to the Tribe when the following conditions occur:

1. the Compact has been approved by the Congress of the United States in a form satisfactory to the Compact Commission;
2. the Compact has been approved by the Crow Tribe;
3. the Compact has been approved by the Water Court; and
4. the Tribe and the U.S. file the necessary paperwork to dismiss the coal severance tax case.

LC2 also authorizes the Governor and Attorney General to agree that any future State production taxes on the Tribe's coal will be paid to the Tribe.

CROW TRIBAL WATER RIGHT

BIGHORN RIVER

- 500,000 AFY of natural flow of the river including groundwater for existing and future Tribal uses.
- The United States will allocate 300,000 AFY of storage in Bighorn Lake to the Tribe.
- All of the rights for future Tribal development can be developed only if there is no adverse effect on current tribal and non-tribal water uses.
- The State will not issue any new appropriations on this river, down to the confluence of the Yellowstone River, once the legislature ratifies this compact, however, new small domestic and stock uses as well as changes and transfers can continue. Local conservation districts can also develop their water reservations.
- A management plan will be developed by the Tribe, State and United States for instream flows and lake levels.

LITTLE BIGHORN RIVER and PRYOR CREEK

- The Tribe may use all available surface and groundwater on the Reservation not needed to satisfy current water uses.
- In both basins the State will not issue any new appropriations once the legislature ratifies this Compact, however, new small domestic and stock uses as well as changes and transfers can continue.

ROSEBUD CREEK

- The Tribe may use all available surface and groundwater on the Reservation not needed to satisfy all current downstream uses provided for in the Northern Cheyenne Compact and certain portions of the Northern Cheyenne Tribal Water Right are protected.
- The basin will be closed to new appropriations under state law on the Reservation.

BITTER CREEK, BLUE CREEK, BLUEWATER CREEK, COTTONWOOD CREEK, DRY CREEKS (TONGUE RIVER BASIN AND YELLOWSTONE BASIN), FIVE MILE CREEK, FLY CREEK, SAGE CREEK, SARPY CREEK, SQUIRREL CREEK, TANNER CREEK and YOUNG'S CREEK

- The Tribe may use all available surface and groundwater on the Reservation not needed to satisfy current water users.
- The portion of these drainages on the Crow Reservation will be closed to new appropriations under State law, however, new small domestic and stock uses as well as changes and transfers can continue.

CEDED STRIP

- The Crow Tribe will have the right to use 47,000 AFY from any water source on lands or interests on the ceded strip which Congress restored to the Tribe or on any lands acquired and held in trust for the Tribe. If the water source is the Bighorn River, the amount developed shall be deducted from the on-Reservation water allocated to the Tribe from the river. No more than 7,000 AFY can be diverted in any one month.

ADMINISTRATION/DISPUTE RESOLUTION

- The Tribe will administer the Tribal water right. The State will administer water rights recognized under state law. The BIA Project will use part of the Tribal water right and will continue to be administered by the BIA under applicable federal law.

- All tribal development, either on the Reservation or on the Ceded Strip, will be reviewed by the Tribe and the Montana Department of Natural Resources and Conservation to determine if it will impact any current water users. Any unresolved disputes will be referred to the Crow-Montana Compact Board.

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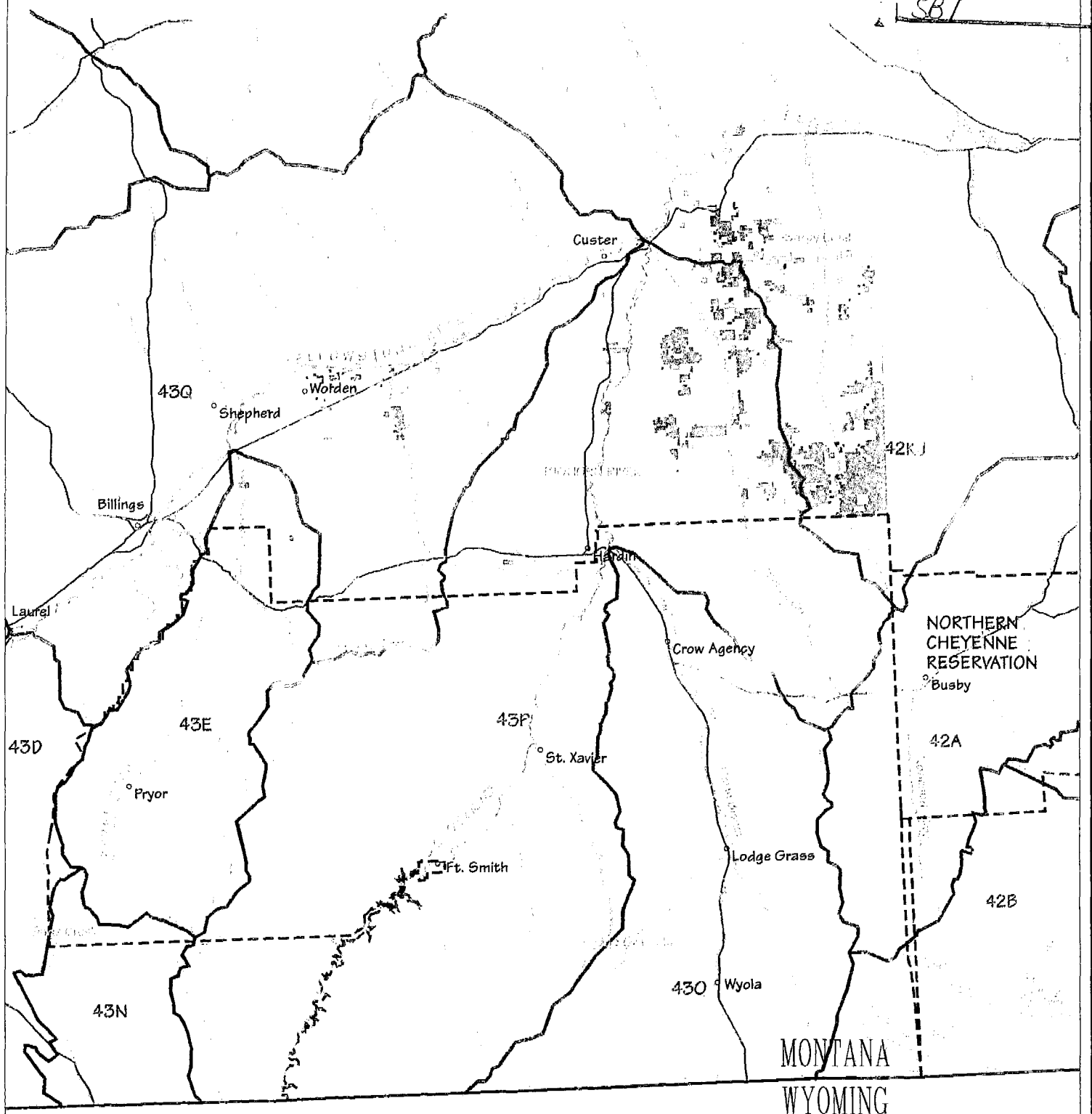
CROW RESERVATION AND CEDED STRIP

EXHIBIT 35
DATE 6/16/99
SB1



CROW RESERVATION

CEDED STRIP

SURFACE PARCELS OWNED BY CROW TRIBE

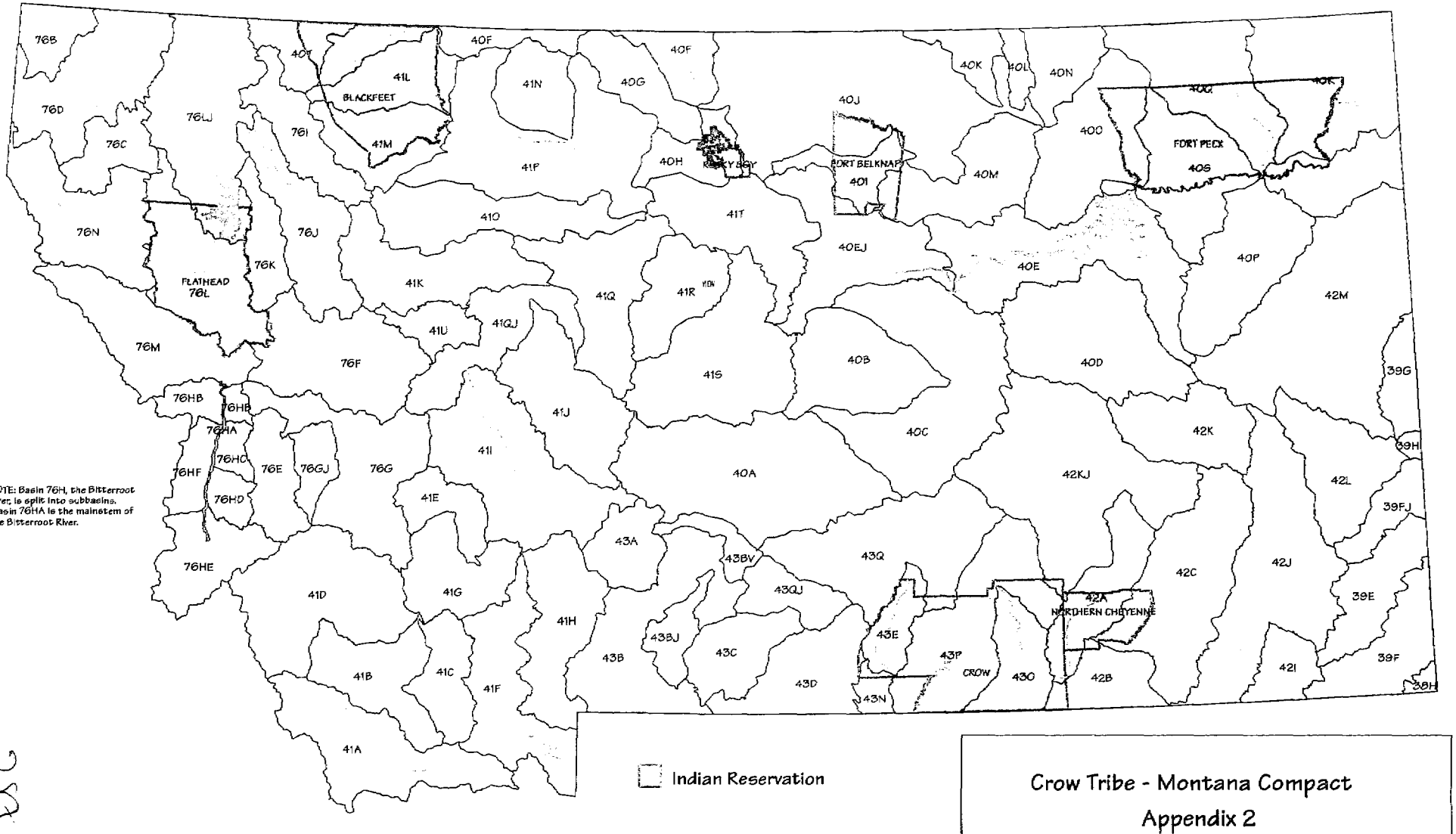
MINERAL PARCELS OWNED BY CROW TRIBE

2 SE

Hse Stg Natural Resources

EXHIBIT # 6
DATE 6/16/99
SB 1

Water Court Basins
in Montana

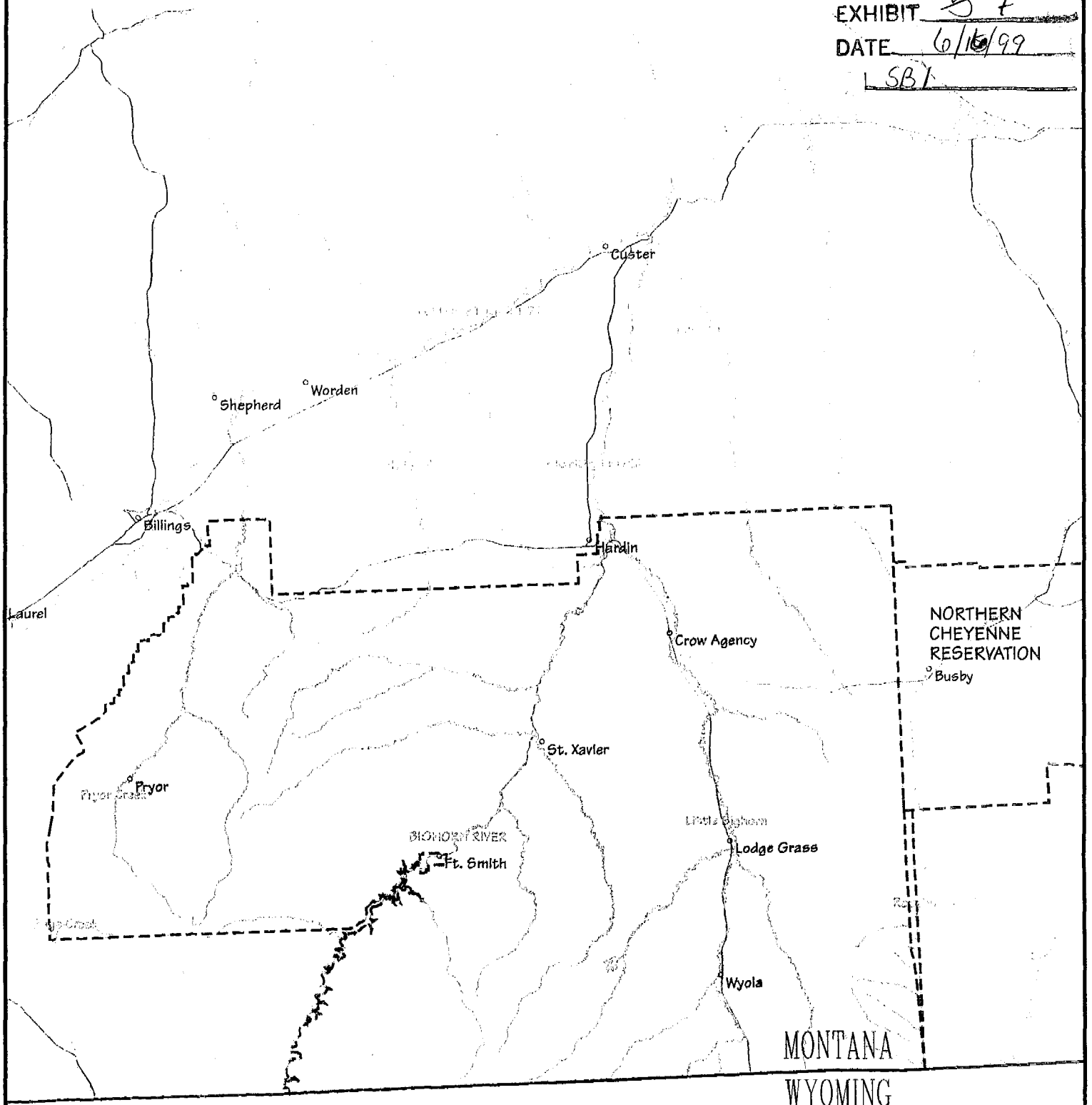


NOTE: Basin 76H, the Bitterroot River, is split into subbasins. Basin 76HA is the mainstem of the Bitterroot River.

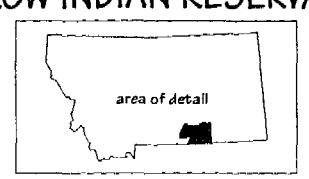
Crow Tribe - Montana Compact
Appendix 2

CROW INDIAN RESERVATION

House Sen. Natural Resources
EXHIBIT 5 7
DATE 6/16/99
SB 1



☐ CROW INDIAN RESERVATION

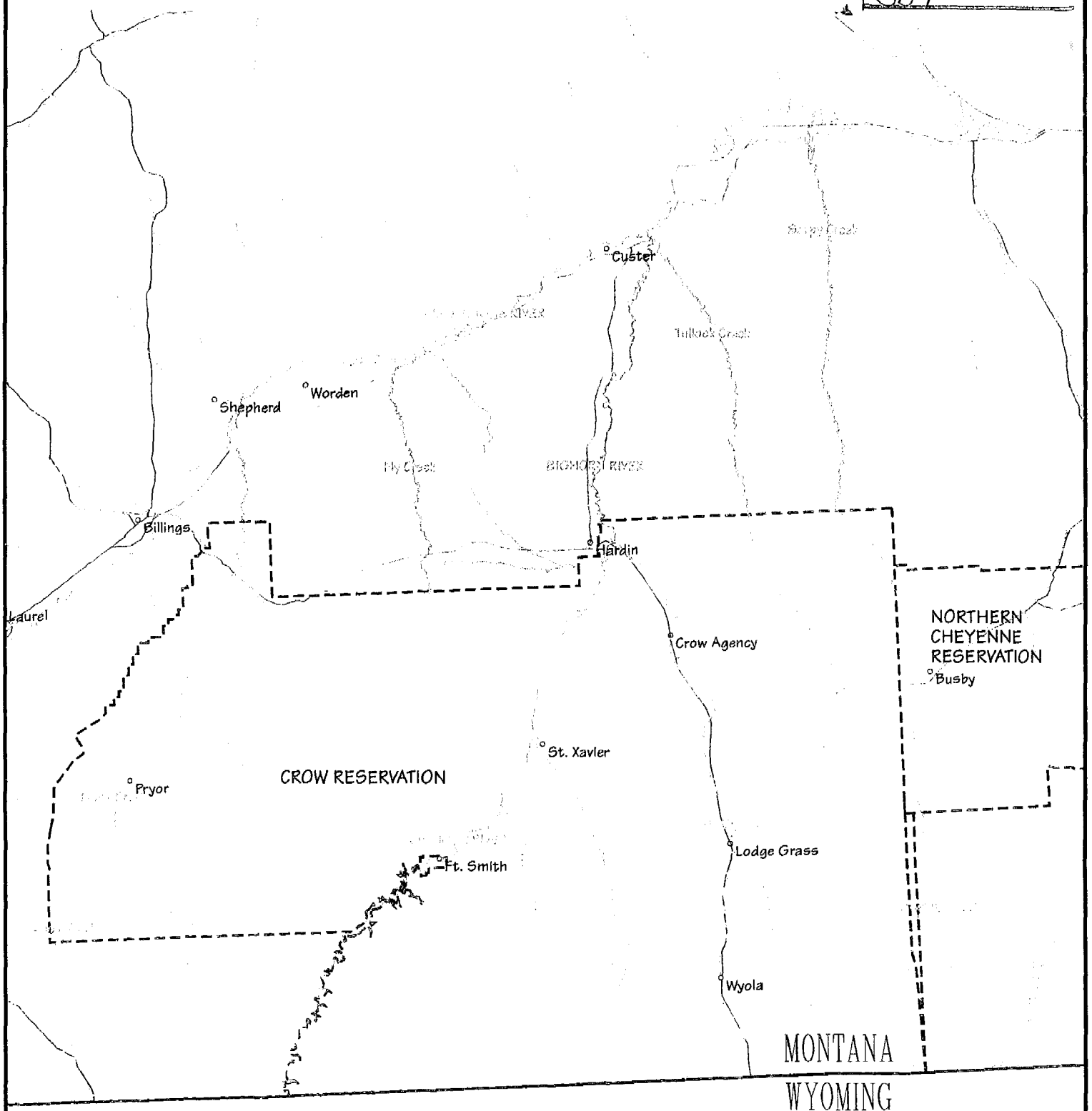


Crow Tribe - Montana Compact
Appendix 4

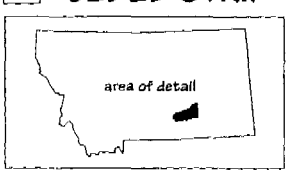
HB 576

Hou
~~Sen.~~ Natural Res.
EXHIBIT 6 & 8
DATE 6/16/99
HB 1

CEDED STRIP



CEDED STRIP



Crow Tribe - Montana Compact
Appendix 5

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EXHIBIT 9
DATE 6/16/99
SB 1

State Engineer's Office

Herschler Building, 4-E Cheyenne, Wyoming 82002
(307) 777-7354 FAX (307) 777-5451
seoleg@missc.state.wy.us

JIM GERINGER
GOVERNOR

GORDON W. FASSETT
STATE ENGINEER

Testimony provided to the Montana Legislature's Senate and House Natural Resources Committees June 15 & 16, 1999 by State of Wyoming Wyoming State Engineer's Office Gordon W. Fassett, State Engineer Cheyenne, WY

The State of Wyoming appreciates this opportunity to provide comments to the Montana Legislature as you consider and act on the Crow Water Rights Settlement Compact. Wyoming, through the Wyoming State Engineer's Office, also appreciated the invitation to many of the public negotiating sessions and for the opportunity to provide input and participate to some degree with the State of Montana, the Federal negotiating team, and the Crow Tribe representatives. While considerable effort was made by the staff at the Montana Reserved Water Rights Compact Commission to involve Wyoming and keep us up to date, the fast pace of the negotiations made it difficult to keep abreast of the many concept and language changes that had been agreed upon by the parties. While some of Wyoming's concerns were addressed by the participants, it was always apparent that Wyoming was not a formal negotiating partner and that the decision making process was driven by the formal parties and the fast track deadlines. Some important matters were left open or addressed with seemingly vague language which will require clarification or may be the source of future court interpretations.

Wyoming at this time neither supports or opposes your ratification of the compact. We see this Compact as a negotiated resolution to a complex set of topics, including the Crow Tribe's water rights. Negotiated settlements such as this are not identical to a legal court determination or adjudication of these complicated and sophisticated legal and technical matters. Nor do they set a

precedent in establishing legal entitlements beyond what may be allowed by law. As a negotiated accommodation between Montana, the Tribe and the Federal government, Wyoming, simply stated, believes this Compact should not have any adverse impact upon the water allocations and rights appropriated in Wyoming under State and Federal law, including the Yellowstone River Compact, nor should it provide the legal right to any party to impinge upon the water resources held as the constitutional property of the State of Wyoming. Wyoming and Montana have worked together as good neighbors for nearly 50 years under the Yellowstone River Compact and we do not want controversies arising from this new arrangement to disrupt this relationship. While we truly commend Montana's desires to seek a settlement of these often difficult and contentious issues based on our own litigation history, we also desire to support your settlement, if that resolution does not affect Wyoming's interests.

We were pleased with several provisions of this Compact. First, Wyoming's position with regard to the Bighorn River was that the volume of the allocations made to the Crow Tribe should be equal to or less than Montana's share of the Bighorn River under the Yellowstone River Compact. Based on information from the Federal negotiating team our analysis shows that, in average water years, the allocations made to the Tribe from the Bighorn River should be met with Montana's compact share. However, the ramifications of this compact in the Little Bighorn River and its tributaries are not as clear cut. We do recognize the accommodation in the Compact of leaving open the question of further appropriations of the Little Bighorn in Wyoming and will pursue this issue, among others, as this compact moves to Congress for ratification.

One difficulty in analyzing the potential long term implications of this settlement was the separation of the items over which Montana has jurisdiction from the "federal" issues. Topics such as the Section 2 matters and the transfer of hydropower revenues generated from Yellowtail Dam operations to the Crow Tribe may be of significant interest to Wyoming. However, since these federal issues were severed from the issues negotiated in this Compact, a total package impact was impossible to evaluate. The fast-tracked process of approval by the

Montana Reserved Water Rights Compact Commission, coupled with the fact that no changes to the exact wording could be made after the Commission's approval, led to final determinations being made by the parties, in what Wyoming felt was still early in the negotiating process. Many language, paragraph and definition changes were made, often without an explanation as to the reason for such additions or deletions. For example, written responses from Montana to questions raised by Wyoming often more clearly described the understanding of the parties than does the plain reading of the language in the Compact.

It appears that this next year, after your ratification, will include many important follow-up activities, such as the development of the river/reservoir management plan. We understand from the Commission staff that Wyoming will be specifically mentioned as a party to involve as the public participation process moves forward for this plan. We appreciate being included at this stage as a portion of Bighorn Reservoir lies in Wyoming and provides significant recreation benefits to that part of our state. Other details of the Compact provisions and operation of the stream system with the newly established water rights will hopefully be fully addressed since time was so short during the negotiations.

Wyoming will be working closely with its Congressional delegation to assure that her rights and entitlements to the water resources of the basin are not impacted, as this ratification process moves forward to Congress.

We appreciate your allowing Wyoming to provide our comments for the record as you deliberate the ratification of this settlement compact. If you have questions, or would like more information about Wyoming's position, I can be reached at 307-777-6150, Wyoming State Engineer's Office, Herschler Bldg, 4E, Cheyenne, WY 82002.

EXHIBIT 10
DATE 6/16/99
SB 1

Supplemental Written Testimony of Faye Bergan
Legal Counsel to the Reserved Water Rights Compact Commission
Submitted to the House Committee on Natural Resources
Senate Bill 1

The following supplemental testimony is merely intended to clarify the intent of the parties with respect to a definition.

With reference to definition #2, Page 3, lines 9-10, stating that

> *"Acre Feet Per Year" or "AFY" means the quantity of water* ***to which the Tribe has a right*** *each year measured in acre feet over a period of a year*

is not intended to have a substantive effect when the term "AFY" or "Acre Feet Per Year" is used in reference to any water rights other than the Crow Tribal Water Right.

EXHIBIT 11
DATE 6/16/99
SB 1

Senate Bill 1
June 16, 1999
Presented by Patrick Graham
Montana Fish, Wildlife & Parks
for the
House Natural Resources Committee

My name is Patrick Graham, director of Montana Fish, Wildlife & Parks. Our principal interest in the compact is Article III, Section A.7., which directs the Tribe, Secretary of Interior and State to develop a streamflow and lake level management plan for the Bighorn River. We support the need for this provision.

Under this section, the plan shall be agreed to within one year of the compact ratification by this body. The state reserves the right to withdraw from the compact if the streamflow and lake level management plan is not agreed to by the parties within one year. There is also a provision to extend the period for negotiation of the streamflow and lake level management plan by agreement of the parties.

The Bighorn River is a world class, wild trout fishery. Angler use on the Bighorn in 1997 exceeded 100,000 angler days. This is slightly less than the Madison, comparable to the Yellowstone and greater than use on the Gallatin, Bitterroot and Big Hole. Based upon the 1987 value of a fishing day on the Bighorn of $93, and accounting for inflation, the actual economic value of the fishery in 1997 dollars could be $16-18 million per year to the economy of Montana. This is clearly a very significant fishery resource.

The value of this fishery resource is highly dependent upon the flow regime provided in the 32-mile stretch between the dam and the Two Leggins diversion. FWP recognized this and applied for a reservation of water for instream flows as part of our Yellowstone River reservation application. The Board of Natural Resources and Conservation granted FWP an instream flow at the mouth of the Bighorn of almost 2.5 million acre-feet per year. However the instream flow reservation was conditioned such that it is "subject to all existing senior water rights ... including but not limited to any decreed rights, or federal or Indian reserved rights." The compact will protect established state consumptive rights and will quantify Crow Tribal reserved rights, and both are senior to our instream flow reservation.

Therefore, it is vital that the Crow Tribal rights, which could be developed under the compact, and the releases from Yellowtail Reservoir, are both balanced with protection of the existing fishery.

FWP has worked closely with the Bureau of Reclamation over the past several years to develop annual operating plans for Yellowtail Reservoir and the Bighorn River that have maintained the fisheries and recreational values of these water bodies. We envision the streamflow and lake level management plan provided for in the compact to provide a framework for the same type of cooperative effort.

We have just signed a Memorandum of Understanding (MOU) with the Crow Tribe that provides the basis for the negotiation of the streamflow and lake level management plan. The MOU states

that:

> The objective of the parties under Section A.7., Article III of the Compact is to develop an enforceable streamflow and lake level management plan that strikes an appropriate and agreed balance between the Tribe's discretion in the development and exercise of the stored and natural flow Bighorn River water rights recognized in the compact with the parties' shared objectives: (1) to provide adequate and reliable instream flows to protect the blue ribbon, wild trout fishery in the Bighorn River, and; (2) to maintain lake levels that take into account the habitat and recreational values of Bighorn Lake.

The MOU also states that: "[t]he parties agree to consider a phased approach based on mutual sharing and compromise among uses particularly when water availability is limited."

FWP is encouraged by the development of this MOU and is hopeful that the negotiations will move forward productively. Having said that, I must also caution the legislature that the MOU does not ensure that we'll be able to negotiate a streamflow and lake level management plan that is adequate, in our view, to protect this valuable wild trout fishery. In the compact, the state reserves the right to withdraw from the compact if an acceptable plan cannot be negotiated within a year. The success of the negotiations will depend on the Crow Tribe, the State of Montana and the involved federal agencies, represented by the Department of Interior, all being willing and able to agree to plans for the future development of water balanced with protection of the fishery. The release patterns by the Bureau of Reclamation will be particularly critical to the success of the negotiations.

We are committed to giving this our best effort.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CROW TRIBE OF INDIANS, THE STATE OF MONTANA BY AND THROUGH THE GOVERNOR OF MONTANA AND THE UNITED STATES OF AMERICA BY AND THROUGH THE SECRETARY OF THE INTERIOR

This agreement is made pursuant to the provisions of the State-Tribal Cooperative Agreement Act, sections 18-11-101 et seq., MCA, and subject to the legislative enactments of the June 1999 Special Session of the Montana Legislature, Crow Tribal Resolution No. 99-33, and 28 U.S.C. §§ 516-517; 43 U.S.C. § 1457; 25 U.S.C.§ 2 ; and 55 Fed. Reg. 48, 9223-9224 (1990). The State of Montana (State), acting through the Governor of the State of Montana (State), the United States of America (United States), acting through the Secretary of the Interior (Secretary) and the Crow Tribe of Indians (Tribe) are parties to this agreement.

PURPOSE OF AGREEMENT

A. The State and Tribe have agreed to seek ratification and approval of the Crow-Montana Compact (Compact) that they have negotiated.

B. The compact provides that the parties shall develop a streamflow and lake level management plan for the Bighorn River from the Yellowtail Dam Afterbay to a point immediately upstream of the Two Leggins diversion, and for Bighorn Lake.

C. The parties further agree to establish certain parameters, rules and procedures governing the negotiations between the parties.

NOW, THEREFORE, the United States acting through the Secretary, the State acting through the Governor and the Tribe acting through the Tribal Chair hereby

agree to the following in order to facilitate negotiations:

1. The objective of the parties under section A.7, Article III of the Compact is to develop an enforceable stream flow and lake level management plan that strikes an appropriate and agreed balance between the Tribe's discretion in the development and exercise of the stored and natural flow Bighorn River water rights recognized in the compact with the parties' shared objectives: (1) to provide adequate and reliable instream flows to protect the blue ribbon, wild trout fishery in the Bighorn River, and; (2) to maintain lake levels that take into account the habitat and recreational values of the Bighorn Lake.

The parties recognize that to accomplish these objectives the flow regime of the management plan must be flexible and adapt to changes in the physical availability of water, the constraints on reservoir operation, the development of consumptive uses of water by the Tribe, and other relevant factors. The parties agree to consider a phased approach based on mutual sharing and compromise among uses particularly when water availability is limited.

2. The parties shall agree to a time line for technical work, environmental compliance, and negotiations leading to a streamflow and lake level management plan.

3. The parties recognize that implementation of a management plan is dependent upon any necessary Congressional action.

4. To the extent possible, it is the goal of the parties to hold the negotiations in Billings. The meetings will be chaired on a rotating basis by United States, State and

Tribal representatives.

5. Negotiations will be open to the general public and the meetings will be recorded. Negotiations will be closed and held in an executive session whenever the parties agree that there is a need to protect confidential or privileged information and to the extent that such closure is consistent with Federal, State and Tribal law.

6. No statements made or positions taken in the negotiations shall be admissible in any trial or other proceeding regardless of whether that statement or position constitutes an offer to compromise under Rule 408 of the Montana Rules of Evidence or Rule 408 of the Federal Rules of Evidence. However, the parties shall not be prohibited by this paragraph from utilizing and presenting as evidence at trial any factual data or technical material created, compiled, or utilized by the party generating such material solely on the ground that the data or material was discussed in the negotiations. This paragraph shall not enlarge or diminish the rights of any party to seek discovery under the State or Federal Rules of Civil Procedure.

7. The parties agree that all press releases and other statements to or discussions with the press regarding negotiations shall be made jointly by the United States, the State and the Tribe. Any press contact outside of these conditions will be reported to the other parties promptly after it occurs.

8. When appropriate, the United States, the State and the Tribe will appoint subcommittees to analyze technical or other designated issues and make recommendations to the United States, the State and the Tribe.

9. The parties to these negotiations shall be limited to the United States, the Tribe and the State. The parties acknowledge that the participation the state of Wyoming and the Northern Cheyenne Tribe may be necessary to resolve some issues and agree to solicit their participation as necessary.

10. The United States, the State and the Tribe acknowledge that attendance of the public, at negotiating meetings is appropriate for a full resolution of the streamflow and lake level management plan issues. Comments from the non-party attendees at negotiation meetings will be received during designated public comment periods to be included in the agenda of each meeting which is open to the public, and at such other times as the chair may direct with the concurrence of the parties. For public meetings or presentations done jointly by the parties, the agenda and the appropriate structure will be agreed to in advance by all parties.

This Memorandum of Understanding shall take effect between and among any of the parties as of the date the Memorandum of Understanding is signed by those parties. This Memorandum may be amended in writing by joint agreement of the parties at any time.

STATE OF MONTANA

Governor

Date: 6-14-99

CROW TRIBE OF INDIANS

Chair

Date: 6-14-99

UNITED STATES OF AMERICA

_____

Secretary of the Interior

Date: _____

EXHIBIT 12
DATE 6/16/99
SB 1

To Whom It May Concern;

As President of the Big Horn County Farm Bureau and a rancher on the Crow Reservation, I urge you to support the Crow Water Compact. This is the first step towards settling long standing issues among tribal and non-tribal members. This agreement protects existing water rights for both tribal and non-tribal members while granting new water rights to the Crow Tribe. The amount of effort and co-operation among the negotiating teams should be commended. I again urge your support for this Compact.

Sincerely,

John A. Stevens

MONTANA FARM BUREAU FEDERATION
502 South 19th • Bozeman, Montana 59718
Phone: (406) 587-3153
Fax: (406) 587-0319

EXHIBIT 13
DATE 6/14/99
SB 1

June 15, 1999

Members of the committee, Thank you for allowing me the opportunity to appear before you on this very important issue. I am Lorna Frank-Karn representing the Montana Farm Bureau Federation and its 32 county Farm Bureau organizations throughout the state. The state organization is headquartered in Bozeman. I have been associated with Montana's largest agricultural organization for the past 30 years and currently hold the position of Information Director and Lobbyist.

The Farm Bureau wishes to go on record as being in support of the Crow Water Compact because we are dedicated to the protection of existing water rights. Many of our members who reside in Big Horn county feel that the current agreement protects all existing water uses. It sets up a process in which to resolve future disputes between Tribal and non-Tribal water users. It also provides for the development of new small domestic and stock water uses and settles other issues between the State and the Tribes.

Therefore, we urge members of this committee to support the Compact and to work together for its passage in the U.S. Congress.

Lorna Karn

Lorna Karn

EXHIBIT 14
DATE 6/16/99
SB 1

Testimony of Robert M. Kelly
IN SUPPORT OF -- The Montana - Crow Indian Nation Water Compact (SB 1)

Mr. Chairman and members of the committee:

I thank you for this opportunity to say my piece on the vital issues we face in this Special Session of the Montana State Legislature. For the record, I state that I am an enrolled Crow Tribal Member, owning a significant portion of Reservation farm and ranch Trust Status property. I am the father of several children both adopted and through birth. Two of my grown children are not enrolled members of the Crow Tribe and seven, most grown up, are enrolled. I am also a life time resident of the Crow Reservation and adjacent communities.

I attended College, but choose to consider myself a graduate of Murphy's school of hard knocks who was fortunate enough to survive a semi accident that would have killed anyone with a normal thin skull.

I have been involved in the political arenas on and off for the past twenty five years but became involved in the issues before us today, at or near the first day of February this year. Prior to that time, others and I were ardent opponents of the current Crow Tribal Administration. We strongly advocated action toward a more responsible, democratic government. However, due to the vital nature of the issues involved and the potential impact these matters will have on the future generations of Crow Indians, we chose to set aside our partisan differences, personality problems, self seeking political aspirations and some of our personal grudges in order that we might direct our energies and collective talents toward achieving a fair and just settlement for our people.

At a briefing session here in Helena more than three months past, representatives of our Tribe shared our progress or lack of same as well as the goals we hoped to achieve, with several legislators inclusive of several present today. At that time, I explained how we opponents of Clara Nomee had joined forces on these issues to attempt to bring about a negotiated settlement. I pleaded with those in attendance on that day, that the Montana Legislators follow our example and not allow a partisan tug of war to occur as the Water Compact issues were deliberated. I now reiterate that same plea and thank you for your support based upon study and sound judgment of all the positive elements which are contained in the negotiated agreement here before you.

As I stand before you, I am not an employee of, nor have I drawn any salary from any source for my active full time participation as a Crow Water Rights negotiator. I have done an extraordinary amount of personal research on historical documents as well as pertinent legal issues, litigation and negotiations of other Western Tribes in addition to our own litigated cases. A great deal of material had to be located and dusted, (a lot from my attic archives) and then carefully reviewed by we negotiators in weighing the decision of whether or not the best interests of the entire Crow Tribe would best be served through a State - Tribal negotiation process versus litigation.

We also considered present day circumstances which have made each of these important issues even more pressing to be resolved in order to avoid costly and unpredictable litigation. We also note that the United States Congress in 1952 enacted the McCarran Amendment, and subsequent United States Supreme Court decisions clearly delineated the right of the States to adjudicate all the waters within the various State boundaries.

We were informed by parties to the litigation that the state of Wyoming and Wind Rivers Tribes had each spent in excess of twenty million dollars while attempting to resolve their water related issues in the courts. When the litigation had ended on this case and several others of record, the various parties were back to square one and basically starting behind where we are today. By negotiating, Montana nor our Tribe has to bear the huge expense of litigation which we may measure monetarily, or by the more unmeasurable weight of the hatred and racial polarization resulting from lawsuits.

Today for the record, I wish to compliment the State of Montana for the policy of negotiating these tough water related issues. I also compliment you for the extremely hard working, dedicated personnel, both on and associated with, the compact team. We noted throughout, the frank, honest manner and professionalism they brought to the table in representing you.. Further, in the what ever it is worth department, I also recommend to other Tribes with unsettled issues, that they explore all avenues of negotiated settlement prior to venturing into the uncertain world and finality of litigation.

I find in my old Random House dictionary the definition for Negotiation is: "mutual discussion, aiming at agreement" That sounds a lot simpler than what we just went through, but maybe they didn't consider Treaty Water Rights. Negotiation is a give and take process where neither party will wind up with everything they may have wanted when they started and probably forgot about by time it ended. You negotiate first! In no event, do you go into court and get spanked good, then try to negotiate your way back out of it.

When we set out to negotiate for our people, we realized the diversity of interest on our reservation. We also were aware that in order to negotiate equitably on behalf of the entire Crow Tribal population, we have to represent each and every interest regardless of how much land, money or political influence they might have. There are about four distinct groups with varied levels of vested interest in the Tribal Water Right. Four

1) It was stated in a public hearing and/or written testimony, that we have almost five thousand or about half of the enrolled Crow Indians who do not own any land at all. The majority of this group are young adults and children with little ability to speak for themselves on these matters. Never the less they are Crow Indian and they are still entitled to share in any economic benefits of the total Crow Tribal Water Right. A right established for the Tribe as a whole, by treaties which were ratified by the United States Congress and interpreted further by the 1908 Winters - U.S. Supreme Court decision..

Next we have three smaller groups of Crow land owners. The total percentage of these three groups probably would represent approximately seven percent of the total Crow Tribal enrollment.

2) First of these is the Allottee. For the benefit of those who have not spent much time in a Reservation environment and may not know what an Allottee is, my old dictionary defines an Allottee as "a person to whom something is allotted". Sparse few, if any, of these Allottees are still living today.

3) The second classification is the second smallest if not most minute element, of the total Tribe; those who are enrolled in the Crow Tribe and individually own land on the Reservation but have acquired a Patent fee title status on formerly Trust held Allotted lands. In accord with Federal policy and again through interpretation of U.S. Supreme Court "Case Law", particularly U.S. Vs. Powers U.S.C. 1939 arising from dispute on our Crow Reservation. However small this group may be in the total, they are nonetheless entitled to the equitable use of the Crow Tribal Water Right which was awarded the entire Crow Tribe by Federal Treaty.

4) Next is the group of individual land owners such as myself and five others who were involved in negotiations on behalf of the Tribe. We "land owners" hold individual tracts of farm/grazing land in significant acreage amounts and have maintained the land in Trust Status. We are not "Allottees" but have acquired our land through purchase or heirship.

5) Then we come to the largest group of the Crow Indian Land Owners. This group would probably represent forty to forty three percent of the entire Tribe. These in this group own some degree of fractionated interest in Trust lands located both on and off the present day recognized Reservation boundaries. Some of these Tracts owned by multiple owners, are located very close to the small town of Grey Cliff just East of Big Timber. Again, these Tribal members are also entitled to an equal share of any benefits derived from the total Tribal Water Right established by Federal Treaty. These Crow land owners and other Ceded Area needs were considered when we negotiated a portion of our right to be obtained from a Yellowstone River source.

This classification of Crow Indian land owners is perhaps the most problematic for the Tribe's future quantification of the Allotment portion of the Crow Tribal Water Right as it may pertain to allocation of individual rights. I will submit this actual computer run from official B.I.A. records with a copy of my testimony as well. I will read a few samples from these sheets which will clearly demonstrate the extent of the problem with attempting to allocate individual rights when you have more land owners than acres.

This negotiated compact agreement:

a) will assure our Crow children the opportunities of engaging in enterprise(s) dependent upon fresh water availability.
b) will assure our children of abundant ground water sources for all their future needs.
c) will assure our children of continued harvest of water fowl and fish by protecting the integrity of one of the world's foremost fisheries..

d) will provide much needed funds for present and future infrastructure needs.
e) will protect all users of the Tribal Water Right on an equal basis.
f) provides for future additional uses of water for irrigation and industry both on the reservation and in the Ceded Area..
g) provides many benefits the Crow Tribe would risk losing in litigation.
h) assures equal sharing of any and all economic benefits and water use among enrolled Tribal members
i) assures a supply of stock water, domestic and cultural waters for present and future needs.
j) assures our children of availability of the necessary natural elements to maintain our Crow Indian Cultural identity.

AND IT DIDN'T COST TWENTY FIVE MILLION IN COURT COSTS WHILE CREATING ANOTHER GENERATION OF RACIAL POLARIZATION!!!

Respectfully Submitted,

Robert (Bob) Kelly

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

Another Attachment

March 30, 1995

M-36982
Memorandum

To: Secretary

From: Solicitor

Subject: Entitlements to Water Under the Southern Arizona Water Rights Settlement Act (SAWRSA)

This memorandum is in response to questions that have arisen regarding the interpretation of the Southern Arizona Water Rights Settlement Act (SAWRSA), Pub. L. No. 96-293, Title III, 96 Stat. 1274 (1982). In order to proceed with the implementation of SAWRSA, the Department requires legal guidance on the nature of the rights in, and authority over, settlement water enjoyed by certain allottees of San Xavier District[1] (allottees) and the Tohono O'odham Nation (Nation).[2]

In considering this matter, I examined the legislative history of SAWRSA, available information on the history of the Tohono O'odham Nation, and relevant case law pertaining to allottee water rights. In addition, I solicited and reviewed comments from both the allottees and the Nation on these issues of significant importance to them. I also received and considered several other helpful comments on an earlier letter to members of Congress addressing these issues. Letter from Solicitor to Senators McCain and DeConcini, Senator-elect Kyl, and Congressmen Kolbe and Pastor, all of Arizona (Dec. 22, 1994).

I conclude that, with the limited exception of the right to convey settlement water, neither the text of SAWRSA nor its legislative history resolves the fundamental issue of relative entitlements of the Nation and the allottees to settlement water.

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[1] The "San Xavier District," a political subdivision of the Tohono O'odham Nation, is coterminous with the "San Xavier Reservation" and the terms are used interchangeably. Of all the lands within the Tohono O'odham Nation, only the San Xavier Reservation was significantly allotted.

[2] The basic question presented here involves the relationship between the Tohono O'odham Nation and the allottees. Nothing in this Opinion addresses or is intended to provide guidance on the respective water rights or jurisdictional authority of Indian tribes vis-a-vis states or non-Indians.

Accordingly, the legal interests of the Nation and the allottees under SAWRSA must be what each has under legal principles generally applicable to federal Indian reserved water rights. The basic attributes of tribal and allottee interests in such water rights are as follows:

1. An Indian allottee has a right to a "just and equal distribution" of water for irrigation purposes.

2. Indian tribes possess broad regulatory power over reservation water resources, including those to which allottees have rights.

3. The quantity of water to which an allottee may be entitled is not subject to precise formulae.

I. BACKGROUND

A. SAWRSA

The Southern Arizona Water Rights Settlement was enacted to resolve Indian water rights claims arising within the San Xavier and Shuk Toak Districts of the Tohono O'odham Nation (formerly the Papago Tribe). The rights granted under SAWRSA were intended "to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water)" within these two Districts.[3]

Briefly, SAWRSA provides that in exchange for waiver and release of existing and future Indian water rights claims: (1) the United States will deliver Central Arizona Project (CAP) or other replacement water to the San Xavier and Shuk Toak Districts; (2) the United States will bear the cost of rehabilitating or constructing irrigation systems to put the water to use; and (3) a limited measure of groundwater within the Districts may be withdrawn for use each year.

B. The Positions of the Nation and the Allottees

Since SAWRSA is, for the most part, silent on the manner in which these benefits are to be allocated, certain allottees of the San Xavier District and the Tohono O'odham Nation have advanced substantially different interpretations of their respective settlement entitlements. This disagreement has been a principal cause of an unfortunate delay in the implementation of SAWRSA. The result has been that many of the benefits of the settlement have not been realized within the time frames originally contemplated by Congress.

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[3] SAWRSA, section 307(e). The legislation did not settle all water rights claims within the Tohono O'odham Nation. Claims in the Sif Oidak, Gu Achi, and Hickwan Districts remain at issue in the ongoing Gila River general stream adjudication.

The key issue requiring resolution is the nature of the rights in, and authority over, settlement water enjoyed by the allottees and the Nation. While the allottees and the Nation agree that their respective interests in groundwater were unaffected by SAWRSA, they disagree on other matters. The respective positions of the allottees and the Nation may be summarized as follows:

> The allottees contend that because the CAP or other replacement water provided by the settlement is a substitute for federal Indian reserved water rights appurtenant to allotted land, their property interests in that water must be equivalent to the rights they held in reserved water. They believe they are entitled to a ratable share of all settlement water (both confirmed groundwater rights and replacement water) based upon their ownership of practicably irrigable acreage within the San Xavier District. In their view, they have the right to use, lease, and otherwise exercise control over this water.
>
> The Nation contends that the right to use all surface water and groundwater within the boundaries of the Nation, including the replacement water provided by SAWRSA, is held by the Nation for the benefit of its members. The Nation further contends that section 306 of SAWRSA[4] expressly gives the Nation the right to lease and otherwise control all settlement water regardless of whether it is pumped from the ground or delivered by the United States as replacement water.

C. Reservation History

By Executive Order dated July 1, 1874, President Grant set aside approximately 71,000 acres in Arizona for the Papago Indian Reserve (commonly referred to as the San Xavier Reservation or the San Xavier District) "for the use of the Papago and such other Indians as it may be desirable to place thereon." 1 Charles J. Kappler, Laws and Treaties 805-06 (2nd ed. 1904). While the San Xavier Reservation itself has never been expanded, additional non-contiguous lands totaling approximately 2,774,370 acres were set aside for Papago Indians by several executive orders and acts of Congress between 1916 and 1939. These lands are commonly referred to as the "Papago Reservation" or the "Sells Papago Reservation." Both

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[4] 96 Stat. at 1279-80. The most pertinent passage is found in section 306(c)(1), which reads, in part:

> The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use ... whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

the San Xavier and Sells Papago Reservations are included within the territory of the Tohono O'odham Nation, a federally recognized Indian tribe operating under a constitution adopted on January 18, 1986, and approved by the Secretary on March 6, 1986, pursuant to 25 U.S.C. § 476. The Tohono O'odham Nation currently has approximately 18,538 members.

In 1890, when the San Xavier Reservation had approximately 363 residents, allotment commenced pursuant to the General Allotment Act, ch. 119, 24 Stat. 388 (1887) (codified as amended at 25 U.S.C. §§ 331-334, 339, 341, 342, 348, 349 & 381 (1982)). Between 1890 and 1917, the United States issued 292 trust allotments on the Reservation.[5] Approximately 85 consisted of "arable" lands; the remainder were timber or mesa lands. The mesa lands were viewed as suitable only for grazing purposes. Annual Report of the Commissioner of Indian Affairs, 1893, 117-19. Approximately 41,566 acres were allotted, of which "arable" allotted lands comprised approximately 2289 acres. The "arable" allotments were grouped together around the Santa Cruz River in the northeast corner of the Reservation.

Even prior to non-Indian contact, the Tohono O'odham were an agricultural people. Historic records of farming in the San Xavier area date to at least the early 1700s. When allotment commenced in 1890, 400 acres were irrigated on the Reservation. By the turn of the century, irrigation had expanded to 1000 acres. Originally, the allotments were irrigated with water from the Santa Cruz River, but non-Indian development adjacent to the Reservation soon began to deplete the flow of the river. By the early 1900s, the allottees began to withdraw and use groundwater. For a time, combined use of groundwater and surface water allowed farming to continue. According to Bureau of Indian Affairs records, irrigated lands on the Reservation reached a maximum of 1781 acres in 1926. (If fallowing practices are taken into consideration, the maximum acreage may have been as high as 2100 acres.) In the 1940s Reservation farming went into a decline when, again due to non-Indian off-reservation development, groundwater supplies beneath the Reservation were depleted. The combined depletion of both surface water and groundwater supplies made Indian farming virtually impossible by the late 1970s.

In 1975, the United States filed suit in federal district court on behalf of the Tribe and the heirs of the original allottees of the San Xavier Reservation. The case, United States v. City of Tucson, Civ. 75-39 TUC-JAW (D. Ariz.), named the City of Tucson and over a thousand other non-Indian water users as defendants and sought to establish and protect the water rights of the Tribe and allottees.

Congress' enactment of SAWRSA seven years later was intended to resolve the claims made by the United States on behalf of Indians in City of Tucson so that the case could be dismissed. The case is still pending because the San Xavier allottees have opposed dismissal on account of their continuing concern about the adequacy of the benefits provided them

[5] At present approximately 1275 Indians, most of whom are members of the Nation, hold interests in allotments on the Reservation.

under SAWRSA,

II. ANALYSIS OF THE PROVISIONS OF SAWRSA

SAWRSA's legislative history shows that the purpose of the settlement was to "provide a fair and reasonable settlement of the water rights claims of the San Xavier Papago Indian Reservation and the Schuk Toak District of Sells Papago Reservation with a minimum of social and economic disruption to the Indian and non-Indian communities in Tucson and eastern Pima County, Arizona." H.R. Rep. 855, 97th Cong., 2d Sess. 37 (1982).

Unfortunately, in fashioning SAWRSA little attention was paid to questions that have now become critical to its implementation--the nature of the rights in, and authority over, settlement water enjoyed by the allottees and the Nation. The answers are, of course, integral to determining how settlement benefits are to be allocated between the Nation and the allottees.

Several provisions of SAWRSA address the rights of the "Papago [sic] Tribe;" e.g., §§ 303(c); 306(a),(c); 309. Numerous statements in the legislative history refer to the "Tribe's claims" and the "Tribe's water rights;" e.g., H.R. Rep. 855, 97th Cong., 2d Sess. 37, 39-41, 43,47 (1982). With the exception of section 306(c), which speaks of the Nation's right to convey settlement water rights,[6] however, none of these provisions or statements directly addresses the question of relative entitlements of the Nation and the allottees to settlement water.

Indeed, the weight that might be given to SAWRSA's references to "tribal" rights is counterbalanced by the qualification in section 307(e) that the benefits of the settlement are to flow not only to the Tribe, but also to "all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation...."[7] Although section 307(e) does not utilize the term "allottees," allottees are the only individuals having "legal interest[s] in lands of the San Xavier Reservation."[8] I must conclude, therefore, that neither the text of

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[6] See footnote 4, supra, and accompanying text. Section 306(c)(1) is discussed in more detail further below.

[7] Section 307(e) also says that the settlement "shall be deemed to fully satisfy" all water right related claims of such tribal members, and that "[a]ny entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title."

[8] A literal reading of section 307(e) would limit settlement benefits to only those allottees who are members of the Tohono O'odham Nation. In fact, a small number of Indians holding trust interests in allotted lands on the Reservation are not members of the Nation. (Congress ought to consider deleting the requirement of Tohono O'odham

SAWRSA nor its legislative history resolves the fundamental issue.

The replacement water and other benefits provided by SAWRSA were intended to be a substitute for federal Indian reserved water rights. Accordingly, in the absence of Congress expressly settling the question in SAWRSA, the legal interests of the Nation and the allottees under SAWRSA must be generally what each enjoyed under legal principles generally applicable to federal Indian reserved water rights.[9] Put another way, I interpret SAWRSA to leave intact the basic nature of the interests in water held by the Nation and the allottees prior to enactment of SAWRSA.

III. GENERAL PRINCIPLES OF INDIAN LAW

The basic attributes of tribal and allottee interests in water are as follows:

> A. An Indian allottee has a right to a "just and equal distribution" of water for irrigation purposes.

The allottees and the Nation claim competing rights to use and control settlement water received in satisfaction of federal Indian reserved water rights. The General Allotment Act secured water to allottees where necessary for farming. Section 7, 25 U.S.C. § 381,[10] the

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membership as a condition to receiving settlement benefits, for there does not seem to be any reason to deny the benefits of settlement water to other Indians holding trust interests in lands on the Reservation.) There is minimal non-Indian ownership of formerly allotted lands on the Reservation. It is my understanding that two parcels of allotted land passed into fee status when they were sold to non-Indians in 1909. In addition, some undivided fractional interests in allotments have passed into non-Indian ownership by virtue of inheritance. It is not necessary to address here the nature of the rights held by non-Indians in formerly allotted lands, see Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1981), because SAWRSA does not purport to settle or otherwise affect such rights. In this respect, SAWRSA is consistent with the general approach followed by the United States in water rights litigation and settlement. Because the United States has no trust responsibility for, and holds no legal title to, non-Indian water rights, we do not assert claims for such rights and have no authority to compromise them in settlement.

[9] The general rule is that the United States may, as trustee, substitute one form of trust asset for another as long as the value of the assets is approximate. See, e.g., Three Tribes of the Fort Berthold Reservation v. United States, 390 F.2d 686 (D.C. Cir. 1968).

[10] This section provides:

> In cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for

only part of the Act expressly to address water, directs the Secretary to ensure a "just and equal distribution" of water among the resident Indians for irrigation purposes. In the context of the General Allotment Act, this clearly means or at least includes allottees. In United States v. Powers, 305 U.S. 527, 532 (1939), the Supreme Court interpreted section 7 to entitle allottees to water: "[W]hen allotments of land were duly made for exclusive use and thereafter conveyed in fee, the right to use some portion of tribal waters essential for cultivation passed to the owners." Therefore, the allottees' claim to a share of reserved water rights and, accordingly, settlement water rights, is accurate, at least as far as agricultural irrigation is concerned.

A basic standard for quantifying federal Indian reserved water rights is the amount of water necessary to irrigate the "practicably irrigable acreage" on the reservation. See Arizona v. California, 373 U.S. 546 (1963). Particularly where, as here, Indian water rights claims are settled by negotiation and congressional legislation rather than by final court decree, the amount of water available to Indians under the settlement may not reflect the amount of practicably irrigable acreage on the reservation. Accordingly, an allottee's share may not be sufficient to irrigate all practicably irrigable allotted acres.

It is also beyond dispute that allottees have the right to lease the water to which they are entitled, at least for use on the allotted land as part of an otherwise authorized lease of that land. See Skeem v. United States, 273 F. 93 (9th Cir. 1921).[11] Tribal consent is not necessary for such leases.

On the other hand, as discussed in the next section, a tribe may, among other things, regulate and perhaps proscribe uses of natural resources, including water, over which it has regulatory jurisdiction. See generally Brendale v. Confederated Tribes and Bands of the Yakima Nation, 492 U.S. 408 (1989). This includes water uses by allottees or their lessees.

> agricultural purposes, the Secretary of the Interior is authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservation; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

[11] Skeem addressed 25 U.S.C. § 403, which authorizes short term leases of allotted land. Since Skeem was decided in 1921, Congress has enacted a more comprehensive statute authorizing longer term leases, 25 U.S.C. § 415, which applies to most reservations. Leasing on the San Xavier Reservation is covered by 25 U.S.C. § 416, which is virtually identical to section 415 except for some special provisions owing to the proximity of the land to a major urban center. These are not relevant to the issue being addressed here, and the holding of Skeem applies to section 416 as well as 415.

Tribal sovereign power over water may be particularly important, and given particular deference, in the desert environment of the Tohono O'odham Nation.

It might be argued that 25 U.S.C. § 415 or § 416 authorizes allottees to lease water apart from allotted land, perhaps even off-reservation. This is by no means clear, however, and I have not yet had to resolve this issue because no lease raising it has been presented to the Department for approval. In acting on such a proposed lease I believe it appropriate to consider not only these statutes, but other federal law and any relevant tribal law.[12] A tribal prohibition of off-reservation water marketing by individuals, for example, would be entitled to great weight.

In the context of SAWRSA, however, I believe Congress has foreclosed the possibility of allottees marketing their right to use water off-reservation, for I read section 306(c)(1) as providing the Nation with exclusive marketing authority over "all water supplies under this title, whether delivered by the Secretary or pumped by the tribe ...." 96 Stat. at 1280. See footnote 4, supra. While this subsection speaks of the Nation's right to control the use of water on or off-reservation, I believe its right to control on-reservation water use by agricultural allottees is constrained in ways discussed in the next section.

B. Indian tribes possess broad regulatory power over reservation water resources, including those to which allottees have rights.

The Nation maintains sovereign control over Reservation resources, including water, within the limits of federal law. The Nation's sovereign power to regulate the water use of those within its jurisdiction may be described as a form of "ownership" in much the same way that the individual states claim ownership of natural resources. That is, as the Supreme Court has noted, "ownership" of water can be described as a "fiction expressive in legal shorthand of the importance to its people that a State have the power to preserve and regulate the exploitation of an important resource." Sporhase v. Nebraska ex rel. Douglas, 458 U.S. 941, 951 (1982).[13]

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[12] The recently enacted American Indian Agricultural Resource Management Act (AIARMA), 25 U.S.C. §§ 3701-3715, 3741-3745 (1993), recognizes extensive tribal rights to control reservation agricultural resources, expressly including water resources. Section 102(a) of the AIARMA requires that the Secretary conduct all land management activities in accordance with tribal agricultural resource management plans and tribal law unless such compliance would be contrary to the Secretary's trust responsibility or is prohibited by federal law. 25 U.S.C. § 3712(a).

[13] The analogy between the rights of a tribe and those of a state is admittedly not perfect. For instance, Congress has imposed specific limits on a tribe's authority to deal with allottees' water rights, see, e.g., 25 U.S.C. § 381, discussed further below, but it has not so constrained the ability of a state to affect individual water users within its jurisdiction.

A tribe's sovereign power to regulate reservation resources continues to exist unless divested by Congress. United States v. Wheeler, 435 U.S. 313, 322-23 (1978); see Felix S. Cohen's Handbook of Federal Indian Law 230-32 (1982 ed.). While many in and out of Congress at the time of enactment of the General Allotment Act expected that tribes would eventually wither and disappear, nothing in the Act affirmatively divests Indian tribes of regulatory control over reservation water. Indeed, the cases interpreting section 7 of the Act recognize that both the tribes and the Secretary have regulatory control over allottee water use. See Colville Confederated Tribes v. Walton (Walton II), 647 F.2d 42, 52 (9th Cir. 1981); Colville Confederated Tribes v. Walton (Walton I), 460 F. Supp. 1320, 1332 (E.D. Wash. 1978). .The tribes' regulatory power is similar to that possessed by states over appropriations of state "owned" water resources.

A tribe's sovereign power includes some authority to allocate water to allotments and to determine the parameters of its use (such as type, amount, required conservation measures, etc.)[14] But a tribe's regulatory authority is circumscribed by the command of section 7 of the General Allotment Act, that an allottee not be denied a "just and equal distribution" of irrigation water. 25 U.S.C. § 381, quoted in footnote 10, supra. While section 7 does not directly address tribal authority, it plainly makes the Secretary responsible for protecting the allottees' interest in agricultural water use. Therefore, the Secretary may, by promulgating federal regulations, preempt tribal regulation that would thwart allottee interests protected by this statute. In this respect, I agree with the view of the Claims Court in Grey v. United States, 21 Cl. Ct. 285, 299-300 (1990), aff'd, 935 F.2d 281 (Fed. Cir. 1991), cert. denied, 112 S. Ct. 934 (1992), to the extent it suggests that section 381 gives allottees a right to some available water.

The question has been raised whether an allottee's right to use water is derivative of the

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In other respects, however, a tribe's sovereign authority over water on the reservation may be greater than that enjoyed by a state over water within its jurisdiction. Tribes may not, for example, be as constrained by the commerce clause as a state. Compare the Court's view of the dormant interstate United States Constitution's commerce clause limitation on states applied in Sporhase, supra, with its view of the Indian commerce clause in Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163 (1989).

[14] Of course, if allotted land is transferred to non-Indian ownership, determining the extent of tribal regulatory powers becomes more complicated. Compare Walton II, 647 F.2d. 42 (tribe has jurisdiction to regulate non-Indian water use in hydrologic system situated entirely within the boundaries of the reservation) with United States v. Anderson, 736 F.2d 1358 (9th Cir. 1984) (state has jurisdiction to regulate on-reservation non-Indian use of water in excess of tribal needs in hydrologic system originating and substantially flowing off-reservation). This complex issue is beyond the scope of our current discussion.

tribe's federal reserved water right, not only historically,[15] but also currently. If it is, then a congressional repeal of 25 U.S.C. § 381 might give rise to a tribal claim that it could freely divest allottees of any right to use available water (even apart from the Indian Civil Rights Act, discussed in the next paragraph). There is room to doubt this result. Section 381's command of a "just and equal distribution" of water was part of the General Allotment Act that gave rise to individual property interests in reservation land, and thus it might be viewed as vesting a right to a "just and equal distribution" of agricultural water in the allottee. So long as section 381 exists, however, there is no need to resolve this question.

Congress has also constrained tribal authority to regulate reservation resources, including water rights, by the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1301-1303. Section 1302(5) prohibits an Indian tribe exercising powers of self-government from "tak[ing] any private property for a public use without just compensation." I believe that, at least so long as section 381 is in force, an agricultural allottee's interest in irrigation water may properly be considered "private property" for purposes of this section. This is not necessarily to say that such interests would constitute private property under the Fifth Amendment. See United States v. Jim, 409 U.S. 80 (1972). Whether allocations for uses other than irrigation may be characterized as private property under the ICRA is not so clear. See the discussion in the next section.

Questions concerning the extent to which a tribal government may regulate private property without crossing the line to a regulatory taking are not easily answered. It would seem that a tribal decision to deny an allottee the use of available water for agricultural use on lands allotted for farming purposes would be impermissible. Other situations may not be so clear, as analogous examples of state regulation of private property show. See, e.g., Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992). In one situation, however, Congress has acted to give (or confirm) sweeping authority in the Tohono O'odham Nation, i.e., controlling the export of water from the reservation. See the earlier discussion of section 306(c)(1) of SAWRSA.

C. The quantity of water to which an allottee may be entitled is not subject to precise formulae.

In Walton II, the Ninth Circuit expanded upon the Supreme Court's holding in Powers that allottees are entitled to share in reservation water resources by discussing several aspects of allottee water rights, including the amount of water to which an allottee is entitled. The measure of the right was determined to be based upon and limited by the number of

[15] Federal Indian reserved water rights arise no later than the date of establishment of a reservation. Winters v. United States, 207 U.S. 564 (1908). A right to use water associated with an allotment created after the establishment and out of a reservation--the kind of allotment being addressed in this Opinion, as opposed to allotments created out of the public domain--is therefore appropriately described as "derivative" of the reservation water right.

practicably irrigable acres held by an allottee. 647 F.2d at 51. But Walton II also recognized that ownership of irrigable acreage does not guarantee the delivery of that full measure of water: "In the event there is insufficient water to satisfy all valid claims to reserved water, the amount available to each claimant should be reduced proportionately." Id.

Section 381's command of a "just and equal distribution" of agricultural water is necessarily dependent on the supply of water available upon any particular reservation. If sufficient water sources are available to satisfy all the purposes for which a reservation was established, each allottee should receive water sufficient to irrigate all practicably irrigable land allotted for agricultural purposes.

It is important to note, however, that only water necessary for irrigation is subject to "just and equal distribution" under section 381. See Joint Board of Control of the Flathead, Mission and Jocko Irrigation District v. United States, 832 F.2d 1127, 1131 (9th Cir. 1987) (criticizing lower court finding that all reservation waters are subject to equal distribution). Water reserved for fisheries or other purposes may not bear the burden of "equal" reduction. Although the Ninth Circuit first held in Walton II that all reservation uses (irrigation, fisheries, domestic, etc.) should in times of shortage be proportionately reduced, Walton II, 647 F.2d at 51; see also Colville Confederated Tribes v. Walton (Walton III), 752 F.2d 397, 405 (9th Cir. 1985), cert. denied, 475 U.S. 1010 (1986), subsequent Ninth Circuit decisions have retreated from that approach. See Joint Board of Control of the Flathead, Mission and Jocko Irrigation District v. United States, 832 F.2d 1127, 1131 (9th Cir. 1987); United States v. Adair, 723 F.2d 1395, 1416 n.25, (9th Cir. 1983), cert. denied sub nom. Oregon v. United States, 460 U.S. 1015 (1983). In these latter cases, pro rata reductions were avoided by the court's determination that the time immemorial priority date recognized for fisheries water was superior to the reservation establishment priority date recognized for agricultural water use.

Given the provisions of the General Allotment Act, the circumstances surrounding allotments on the San Xavier Reservation, and the history of water use on the Reservation, those allotments originally identified as arable and intended for farming have a stronger legal interest in settlement water than other allottees. Allotments created primarily for grazing, timber or other purposes may not receive the same measure of water vis-a-vis other reservation uses as those created for agricultural purposes.

I do not mean to suggest, however, that the principles applicable to the distribution of water secured by federal reserved Indian water rights among tribes and allottees in any way affects the standard for quantification of such rights in the first instance. When a reservation is established, water rights in an amount sufficient to accomplish the purposes of the reservation are impliedly reserved. Winters v. United States, 207 U.S. 564 (1908). Whether measured by the practicably irrigable acreage standard or otherwise, the aggregate reservation water right is neither reduced nor enlarged by subsequent federal actions distributing it among reservation Indians for particular purposes.

In sum, the history of allotments, the history of allottee water use, and the nature and type of other reservation interests in water all should inform the allocation and priority of allottee entitlements when there are insufficient supplies to meet all demands. This is, however, a complex matter and definitive determinations must be left for the future.

IV. CONCLUSION

The relative rights and authority held by allottees and tribes with respect to federal Indian reserved water is a complex area of law. Many questions must necessarily be addressed in the context of the facts unique to a particular reservation. The above discussion shows, however, that it is inaccurate to speak of either tribal governments or agricultural allottees as having plenary rights in water vis-a-vis each other. Agricultural allottees have rights tribes cannot wholly defeat; at the same time, tribes have regulatory authority over reservation water use from which allottees are not immune.

This Opinion was prepared with the substantial assistance of Pamela S. Williams and Daniel L. Jackson in the Office of the Solicitor, and was reviewed by more than a dozen attorneys in the Office with responsibility for Indian water rights issues.

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
33E 03S 0029 0260	128	40.00	32.00	8.00	1130079606				X..	
32E 03S 0029 0271	143	80.00	0.00	80.00						
32E 03S 0024 0271-A	136	83.46	0.00	83.46						
32E 03S 0024 0272	14	40.00	0.00	40.00						
32E 03S 0025 0275	69	97.33	0.00	97.33						
32E 03S 0025 0276-B	33	40.00	0.00	40.00						
31E 03S 0027 0277-B	33	120.00	0.00	120.00						
33E 03S 0032 0280	43	220.00	0.00	220.00						
32E 04S 0012 0293	34	80.00	0.00	80.00						
32E 04S 0011 0296	23	56.38	67.90	0.00	1119029601				X..	LEASED ACRES > OWNER ACRES
32E 04S 0011 0298	9	55.20	0.00	55.20						
32E 05S 0003 0300	10	40.00	0.00	40.00						
32E 05S 0003 0302-B	8	20.00	17.50	2.50	1113869505				X..	
32E 04S 0028 0307-B	6	40.00	0.00	40.00						
31E 04S 0036 0318	6	80.00	160.00	0.00	1100739498	1128539503		X..		XX. LEASED ACRES > OWNER ACRES
35E 08S 0022 0324-A	24	17.50	18.75	0.00	1121869702				X..	LEASED ACRES > OWNER ACRES
36E 08S 0031 0324-C	23	80.00	64.30	15.70	1122789702				X..	
35E 08S 0032 0324-H	24	2.50	0.00	2.50						
35E 08S 0014 0330-B	10	0.62	0.00	0.62						
35E 08S 0034 0335	106	40.00	0.00	40.00						
35E 08S 0035 0335	106	80.00	0.00	80.00						
32E 04S 0024 0338-A	7	40.00	0.00	40.00						
32E 04S 0024 0343	68	40.00	0.00	40.00						
275 03S 0007 0357	108	80.00	0.00	80.00						
35E 04S 0029 0361	74	120.00	0.00	120.00						
35E 04S 0030 0361	74	120.00	0.00	120.00						

Sen. Natural Res
EXHIBIT 16
DATE 6/5/99
SB 1

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
34E 03S 0004 0974	10	99.28	0.00	99.28						
38E 07S 0004 0982	12	160.00	0.00	160.00						
34E 02S 0026 0988-A	12	5.00	0.00	5.00						
31E 06S 0036 0993-B	13	160.00	0.00	160.00						
31E 06S 0036 0995	11	120.00	0.00	120.00						
37E 02S 0022 0996	13	160.00	0.00	160.00						
37E 02S 0023 0996	13	120.00	0.00	120.00						
38E 01S 0029 0996	13	280.00	0.00	280.00						
38E 01S 0032 0996	13	280.00	0.00	280.00						
37E 02S 0022 0996-A	7	160.00	0.00	160.00						
37E 02S 0023 0996-A	7	120.00	0.00	120.00						
31E 06S 0010 0997	**31**	**37.39**	0.00	37.39						
36E 04S 0004 1001-C	17	120.55	241.10	0.00	1119779698	1139049809			X.	XX. LEASED ACRES > OWNER ACRES
33E 02S 0033 1002	8	40.00	80.00	0.00	1114099498	1130649803			X.	XX. LEASED ACRES > OWNER ACRES
34E 02S 0011 1007	8	80.00	0.00	80.00						
34E 02S 0011 1009-A	26	40.00	0.00	40.00						
34E 02S 0024 1015-A	**189**	**40.00**	0.00	40.00						
34E 02S 0024 1015-B	25	23.31	22.90	0.41	1119769606				X.	
34E 02S 0024 1016-A	6	5.00	0.00	5.00						
34E 02S 0024 1017	**59**	**40.00**	0.00	40.00						
34E 02S 0023 1022	15	120.00	0.00	120.00						
34E 02S 0008 1024	84	240.00	0.00	240.00						
34E 02S 0008 1025	78	80.00	0.00	80.00						
33E 04S 0035 1026-G	13	80.00	0.00	80.00						
34E 02S 0008 1027	18	80.00	0.00	80.00						
34E 02S 0017 1027	18	160.00	0.00	160.00						
34E 02S 0008 1028	84	120.00	0.00	120.00						
34E 02S 0013 1028	84	40.00	0.00	40.00						

TRACT-IDENTIFICATION		NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
35E 02S 0005	1028	84	283.71	0.00	283.71						
35E 02S 0006	1028	84	358.57	0.00	358.57						
37E 07S 0006	1033	17	119.79	0.00	119.79						
36E 06S 0036	1034	15	240.00	0.00	240.00						
36E 06S 0019	1035	19	40.00	0.00	40.00						
36E 06S 0019	1037	12	42.11	0.00	42.11						
35E 09S 0006	1040-A	19	40.00	0.00	40.00						
37E 01S 0010	1042	8	160.00	0.00	160.00						
37E 01S 0011	1042	9	320.00	0.00	320.00						
34E 02S 0011	1044	6	40.00	0.00	40.00						
35E 04S 0030	1049	179	55.40	0.00	55.40						
34E 01S 0033	1053	10	31.77	8.51	23.26	1123149702				X..	
34E 01S 0033	1053-A	7	2.50	0.00	2.50						
34E 01S 0023	1059-E	9	20.00	0.00	20.00						
34E 01S 0024	1059-E	9	80.00	0.00	80.00						
32E 05S 0002	1066	11	40.00	0.00	40.00						
34E 01S 0020	1089	24	4.28	0.00	4.28						
34E 01S 0034	1098	78	40.00	0.00	40.00						
37E 04S 0033	1114	40	160.00	0.00	160.00						
35E 04S 0015	1118	34	80.00	0.00	80.00						
35E 04S 0028	1120	21	74.68	60.00	14.68	1107439499				X..	
35E 04S 0015	1125	13	80.00	0.00	80.00						
35E 04S 0021	1139-B	10	5.00	0.00	5.00						
35E 04S 0034	1142-B	10	40.00	28.43	11.57	1110349499				X..	
35E 04S 0033	1142-C	10	80.00	40.00	40.00	1110349499				X..	
35E 04S 0028	1149	89	40.00	0.00	40.00						

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RESERVATION 202 IDLE TRACT REPORT NON-COMPETENT TRACTS DATE 02/04/99 PAGE NO. 18
CROW TIME 17:22:50:0

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
38E 03S 0032 1551-B	48	400.00	171.60	228.40	1131719601					
35E 04S 0005 1551-B	48	171.60	400.00	0.00	1131719601					X.. LEASED ACRES > OWNER ACRES
38E 04S 0006 1558	12	80.00	79.20	0.80	1118619601	1119609606				XX.
36E 06S 0019 1575-A	12	40.00	0.00	40.00						
38E 07S 0008 1580-B	30	480.00	0.00	480.00						
38E 07S 0009 1580-B	30	20.00	0.00	20.00						
36E 07S 0033 1588	45	400.00	320.00	80.00	1121049601					X..
36E 07S 0028 1590	32	160.00	0.00	160.00						
36E 07S 0029 1590	32	160.00	0.00	160.00						
36E 07S 0032 1590	32	40.00	0.00	40.00						
36E 07S 0033 1590	32	80.00	0.00	80.00						
35E 07S 0001 1592-A	25	240.13	0.00	240.13						
35E 07S 0010 1594-A	13	240.00	0.00	240.00						
37E 05S 0007 1594-C	6	40.00	0.00	40.00						
35E 07S 0010 1596-A	13	69.53	0.00	69.53						
35E 07S 0011 1596-A	13	80.00	0.00	80.00						
33E 08S 0032 1597	6	160.00	0.00	160.00						
35E 07S 0001 1598	40	80.39	0.00	80.39						
37E 07S 0029 1598	40	240.00	208.82	31.18	1122019702					X..
37E 07S 0017 1599	24	160.00	157.98	2.02	1121949702	1122449702				XX.
35E 08S 0011 1618-A	6	60.00	0.00	60.00						
35E 09S 0009 1648	209	120.00	0.00	120.00						
35E 09S 0004 1649	110	120.00	0.00	120.00						
35E 09S 0006 1651-A	8	40.08	40.00	0.08	1126699702					X..
35E 09S 0006 1652-A	21	40.00	0.00	40.00						
35E 09S 0019 1652-D	9	145.00	0.00	145.00						
37E 07S 0018 1669	24	146.38	143.13	3.25	1121879702					X..
35E 09S 0001 1674-A	10	191.89	169.40	22.49	1129619303					X..

spec

RESERVATION 202 IDLE TRACT REPORT - NON-COMPETENT TRACTS DATE 02/04/99 PAGE NO. 35
CROW TIME 17:22:50:0

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
32E 02S 0028 M0078	14	120.00	0.00	120.00						
35E 01S 0036 M0078-C	14	40.00	0.00	40.00						
30E 05S 0014 M0079	171	40.00	0.00	40.00						
30E 05S 0023 M0079	171	40.00	0.00	40.00						
32E 02S 0028 M0079	171	40.00	0.00	40.00						
33E 01S 0025 M0079	171	40.00	0.00	40.00						
32E 02S 0021 M0082	59	80.00	0.00	80.00						
33E 01S 0026 M0094	11	40.00	0.00	40.00						
33E 01S 0035 M0094	11	40.00	0.00	40.00						
33E 01S 0026 M0095-A	33	40.00	0.00	40.00						
33E 01S 0027 M0097-A	8	40.00	0.00	40.00						
33E 01S 0035 M0106	42	40.00	0.00	40.00						
33E 02S 0017 M0106	42	80.00	0.00	80.00						
33E 02S 0018 M0106	42	40.00	0.00	40.00						
33E 02S 0009 M0108-A	41	80.00	0.00	80.00						
33E 02S 0009 M0109	41	80.00	0.00	80.00						
33E 02S 0008 M0109-A	41	39.48	0.00	39.48						
33E 02S 0009 M0109-A	41	40.00	0.00	40.00						
34E 02S 0023 M0111-A	31	80.00	0.00	80.00						
33E 01S 0035 M0112-B	7	2.50	0.00	2.50						
33E 02S 0013 M0119-A	10	60.00	0.00	60.00						
33E 02S 0003 M0121-A	7	80.27	0.00	80.27						
33E 02S 0002 M0126	24	40.17	0.00	40.17						
34E 02S 0030 M0126	24	80.00	0.00	80.00						
34E 02S 0031 M0126	24	40.00	0.00	40.00						
33E 02S 0002 M0127-A	20	39.55	0.00	39.55						
33E 02S 0002 M0127-B	20	0.62	0.00	0.62						
33E 02S 0012 M0128-C	30	20.00	0.00	20.00						
34E 02S 0007 M0128-C	30	40.00	0.00	40.00						
33E 02S 0002 M0129-B	19	40.15	0.00	40.15						

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RESERVATION 202 — IDLE TRACT REPORT — NON-COMPETIENT TRACTS — DATE 02/04/99 — PAGE NO. 51
CROW — TIME 17:28:50:0

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
35E 04S 0016 M1140	18	40.00	0.00	40.00						
36E 04S 0031 M1140-B	10	60.00	0.00	60.00						
35E 04S 0028 M1143-A	17	80.00	0.00	80.00						
36E 04S 0028 M1159-B	10	120.00	0.00	120.00						
33E 08S 0017 M1163-B	46	80.00	0.00	80.00						
35E 04S 0029 M1164	11	40.00	0.00	40.00						
33E 08S 0017 M1164-A	15	120.00	0.00	120.00						
35E 05S 0004 M1166	42	120.00	0.00	120.00						
35E 04S 0032 M1170-A	11	80.00	0.00	80.00						
35E 04S 0033 M1170-B	12	80.00	0.00	80.00						
35E 04S 0032 M1173	219	120.00	0.00	120.00						
35E 04S 0033 M1173-A	110	40.00	0.00	40.00						
33E 08S 0030 M1180	20	234.20	0.00	234.20						
35E 05S 0009 M1181-A	15	40.00	0.00	40.00						
33E 08S 0030 M1181-B	15	80.00	0.00	80.00						
35E 05S 0021 M1194	15	120.00	0.00	120.00						
35E 05S 0022 M1194	15	34.50	0.00	34.50						
35E 05S 0022 M1194-A	44	5.50	0.00	5.50						
35E 05S 0022 M1195-B	20	80.00	0.00	80.00						
35E 05S 0010 M1202	163	160.00	0.00	160.00						
36E 07S 0002 M1214-C	33	239.41	0.00	239.41						
36E 06S 0035 M1215-A	33	140.00	0.00	140.00						
36E 06S 0035 M1215-B	33	2.50	0.00	2.50						
36E 06S 0035 M1215-C	33	2.50	0.00	2.50						
36E 06S 0035 M1215-D	33	15.00	0.00	15.00						

TRACT-IDENTIFICATION	NO. OWNERS	OWNER ACRES	LEASED ACRES	IDLE ACRES	LEASE-1	LEASE-2	LEASE-3	EXPIRED LSE	FREE LSE	ERROR
35E 09S 0007 M1379	29	160.02	0.00	160.02						
34E 08S 0026 M1380-A	9	120.00	0.00	120.00						
34E 07S 0023 M1402-A	35	120.00	0.00	120.00						
34E 07S 0015 M1406-C	8	77.50	0.00	77.50						
34E 07S 0022 M1408-A	9	120.00	0.00	120.00						
32E 04S 0013 M1417	279	40.00	0.00	40.00						
35E 06S 0029 M1425	30	40.00	0.00	40.00						
35E 06S 0029 M1426-A	9	40.00	0.00	40.00						
35E 06S 0029 M1426-B	9	40.00	0.00	40.00						
35E 06S 0029 M1427-F	9	20.00	0.00	20.00						
35E 06S 0029 M1428-B	17	40.00	0.00	40.00						
35E 06S 0022 M1430-B	18	2.50	0.00	2.50						
35E 06S 0015 M1436-B	7	160.00	0.00	160.00						
35E 06S 0015 M1437-A	7	80.00	0.00	80.00						
35E 04S 0009 M1440-A	9	160.00	0.00	160.00						
35E 06S 0011 M1450	7	29.23	0.00	29.23						
36E 06S 0005 M1450-A	7	120.00	0.00	120.00						
35E 08S 0021 M1481-B	23	40.00	0.00	40.00						
35E 06S 0003 M1490-A	17	120.00	0.00	120.00						
35E 08S 0029 M1490-B	17	40.00	0.00	40.00						
35E 06S 0003 M1491	17	120.00	0.00	120.00						
36E 06S 0018 M1496	6	44.00	0.00	44.00						
36E 06S 0017 M1496-C	6	80.00	0.00	80.00						
35E 08S 0032 M1505-B	7	40.00	0.00	40.00						
35E 06S 0013 M1515-A	10	40.00	0.00	40.00						

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EXHIBIT 15
DATE 6/16/99
SB 1

SPECIAL SESSION OF MONTANA LEGISLATURE
CROW TRIBE-MONTANA
WATER RIGHTS COMPACT

June 15, 1999

I am a rancher and landowner in Big Horn County on the Crow Reservation. I presently hold various water filings consisting of domestic, irrigation, and stock water uses. The Little Big Horn River flows through my property for approximately 2 miles. I am presenting this letter in support of the Water Rights Compact Agreement. I believe the agreement, with some exceptions, is reasonably fair to all parties involved.

At the first meeting I attended the proposal was presented as a three part package proposal – water rights, coal severance tax, and resolution of Section 2 of the 1920 Crow Allotment Act. I urge the parties involved to continue with resolving Section 2 with equal fairness to both tribal and non-tribal landowners.

I was skeptical at the first meeting I attended that this proposal would reach this phase of accomplishment. I certainly commend the Montana Reserved Water Rights Compact Commission, the representatives of the Crow Tribe, and the other parties involved for the efforts and time they have devoted to this complicated and difficult proposal.

Charles F. Fuller
Fuller Ranch
P.O. Box 158
Wyola, Montana 59089

YELLOWSTONE IRRIGATION DISTRICT

ROSEBUD-TREASURE COUNTIES

Box 169
HYSHAM, MONTANA 59038

RECEIVED
JUN 0 8 1999
DEPT. OF NATURAL RESOURCES
AND CONSERVATION
BILLINGS OFFICE

June 7, 1999

EXHIBIT 16
DATE 6/16/99
SB 1

Governor Marc Racicot
State Capitol
Helena, MT

Dear Governor Racicot,

The Board of the Yellowstone Irrigation District would like to lend it's support to the proposed water compact between the State of Montana and the Crow Tribe.

This proposal is a rare opportunity to secure the water rights for the future generations of Montana land owners and water users.

This proposal is also the best vehicle for clearing up other issues that have been a controversary in Eastern Montana.

The passage would allow us in Eastern Montana to move forward with some confidence for the future development of our water and land resources.

Thank you for your consideration and efforts.

Harlin Steiger
Harlin Steiger, Chairman

Bill Asay
Bill Asay, Member

Myles VanHemelryck
Myles VanHemelryck, Member

HUNTLEY PROJECT IRRIGATION DISTRICT
P.O. Box 61
Ballantine, MT 59006
(406) 967-3400

To Whom It May Concern:

We at the Huntley Project Irrigation District support the Water Rights Compact between the State of Montana and the Crow Tribe in hopes that Legislature would pass this and to pass off to Govener Marc Racicot for consideration.

Thank You.

Sincerely,
Huntley Project Irrigation District
Board of Directors

June 11, 1999

Govenor Racicot
State Legislature

We the stockholders of the Victory Ditch Company agree with the Crow Tribal water pact.

Sincerely,
Delbert Walter
Victory Ditch Co.
Delbert Walter, Pres.
Box 49
Custer, Mt 59024

Bighorn-Tullock Water Users
Box 167
Bighorn, Montana 59010

June 14, 1999

Governor Marc Racicot
State Capitol
Helena, Montana

Dear Governor Racicot,

The Board of Directors of the Bighorn-Tullock Water Users supports the proposed water compact between the State of Montana and the Crow Tribe.

We feel that the passage of this proposal is very important to the security of water rights and the future development of land resources for our State and for generations to come.

Your efforts and consideration are very appreciated and we thank you.

Most sincerely,

Jake L. Strecker
Director

Director

John R. Strecker
Director

BIG HORN LOW LINE DITCH COMPANY
208 North Center
Hardin, MT 59034

June 10, 1998

To Whom It May Concern;

RE: Water Rights Compact entered into by the State of Montana, The Crow Tribe, and the United States of America

The Board of Directors of Big Horn Low Line Ditch Company have attended several meetings on the compact and have reviewed the proposal and believe that although not perfect this proposal should be supported and hope that you will do your best to see that it passes.

Thank you,

Darell Webber
President
Big Horn Low Line Ditch Co.

Vermilion Ranch
Box 30758
Billings, Montana 59107
Ph.: 406/259-4589 — Res.: 373-6138

To: Members of the Montana House and Senate
Montana State Legislature
State Capitol
Helena, MT 59601

Ladies and Gentlemen:

This special session of the Montana legislature is certainly one of the most important ever called. There will never be a time in the foreseeable future that this governing body of Big Sky Country will have more opportunity to cure some of the real problems within the Indian and non-Indian communities.

I rise in support of the water compact and the corrections entitled to. This is a great opportunity for both Indian and non-Indian tribe members living within the reservation. Land values for the Indian lands will go up. Indians who own land on the reservation who wish to sell them, will have greater values by far than they have today. Non-Indian ranchers who would want to sell will eliminate the clouds on the titles at the present time. It is a win-win deal.

There will be a great turnover in our State Legislature and in the Indian Bureau in another year and they probably won't be able to get this much needed legislation taken care of.

I'm sure that with wordage corrections to fit federal language, the Federal government and the Bureau of Indian Affairs will go along with this as well. It needs to happen. It must happen. Time is of essence and there are only two days in which to cure it.

Due to a prior commitment with the Livestock Marketing Association, I find it impossible to be with you in Helena. Otherwise, I would have been there on June 16-17 myself. Let's don't let this wonderful opportunity for Indian and non-Indian alike pass us by. It may never come our way again.

Yours sincerely

Patrick K. Goggins
Pryor Creek Ranch
Division of Vermilion Ranches

June 11, 1999

Mr. Pat Riley
Department of Natural Resources & Conservation
Water Resources Regional Office
Airport Industrial Park
1371 Rimtop Drive
Billings, MT 59105-1978

Dear Mr. Riley,

We are writing in support of the Water Rights Compact ,entered into by the State of Montana and the The Crow Tribe, and the United States of America.

We support the Compact as it has been submitted to the Montana Legislature.

Sincerely,

Allen Graham

Susan Graham

Allen and Susan Graham
Landowners/Residents
Crow Indian Reservation
Lodge Grass, MT 59050

EXHIBIT 17
DATE 6/16/99
SB 1

A PETITION IN SUPPORT OF THE CROW TRIBE-STATE OF MONTANA WATER COMPACT

Which includes the attached list of advantages for the Crow Tribe.

We, the undersigned, all duly enrolled and voting members of the Crow Tribe and the Crow Tribal Council, the governing body of the Crow Tribe, hereby express our committment to and firm support of the proposed water compact between the State of Montana and the Crow Tribe. We ask that you look favorably upon this compact and vote in favor of it.

1. Estyn R. Fighter Sr.
2. Leroy Stewart
3. [illegible]
4. [illegible]
5. [illegible]
6. Patrick Addison Sr.
7. [illegible]
8. [illegible]
9. Carol Black Eagle
10. [illegible]
11. Clayton T. Pease
12. [illegible]
13. Lois Old Bear
14. Edna Blackhawk
15. [illegible]
16. Victoria Snell
17. [illegible]
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19. [illegible]
20. David Stewart Jr.
21. Carol Bear Below
22. Randean Little Light
23. [illegible]
24. [illegible]
25. [illegible]
26. Vincent Blackhawk Jr.
27. Keith Blackhawk
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31. [illegible]
32. [illegible]
33. Cathy Ignacio
34. [illegible]
35. [illegible]
36. [illegible]
37. Ellen Birdingground
38. Alta Birdingground
39. Odenette Alden
40. Jay Matt
41. Maria Matt-Oldbull
42. Tiffany Matt

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1. Clinton M. Old Bear
2. Carl Frietty Paint
3. Mary J. Birdin Wood
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1. Brucian Howe
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3. Samuel Hughes Jr.
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5. Alberta Rides Horse
6. Robert C Rides Horse Jr.
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3. Avalon Takes Horse
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1. Ramona Howe Tere Director
2. Dana Burdette-Hound
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EXHIBIT 18
DATE 6/16/99
SB 1

Padlock Ranch Company

Star Route Box 65
Ranchester, Wyoming 82839
Phone 307-655-2264
FAX 307-655-2257

BRAND
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LEFT RIB

TO: ALL MONTANA LEGISLATORS

FROM: DAN SCOTT

DATE: 16 JUNE 1999

RE: CROW WATER COMPACT

I wish to voice my support for the CROW WATER COMPACT settlement. I am a rancher who has been involved on the Crow Reservation for over 50 years, and I am Chair of the Crow Leaseholders Association which represents over 40 families doing business with and leasing land from members of the Crow Tribe of Indians. I understand the timing and urgency of this water settlement issue and how it is tied to other negotiations and settlements that will have a great impact on all who live on or have personal or business relationships within the Crow Reservation.

The WATER COMPACT, while seemingly created overnight, is the result of years of study and research by a number of very competent individuals, knowledgeable of water, history, and law. While the document is not perfect in every detail, it brings the major issues between the Crow Tribe and the historic water users to a just and fair solution. No one will lose any beneficial right to water and those rights will be administered through a State Agency by a professional staff.

There is a long history of distrust and suspicion on the Crow Reservation, between both Indians and non-Indians and among the Tribal Members themselves. There is a perception that the water settlement was reached too quickly and that additional negotiation is needed to reach a fair conclusion. On the contrary, just when it appears that the Crows and their non-Indian neighbors have common interests and friendly cooperation, to delay this settlement would destroy the first opportunity we have had to work together in the memory of the present generation.

The CROW WATER COMPACT is fair and just to all water users. There will need to be additional interpretations as questions arise, but there is a forum for these. It is vitally important to maintain this new spirit of cooperation and proceed to the betterment of the Crow Reservation and it's citizens.

Dan Scott

EXHIBIT 19
DATE 6/16/99
SB 1

Testimony by the United States before the Montana State Legislature on the Proposed Water Rights Compact Between the State of Montana and the Crow Tribe

My name is John Chaffin. I am an attorney with the Department of the Interior, Field Solicitor's Office located in Billings, and I serve as a member of the United States' Federal Negotiating Team for the Crow Tribe's water rights. I am here today on behalf of the Chairman of the United States Federal Negotiating Team for the Crow Tribe, Mr. William Benjamin. Mr. Benjamin was involved in an accident on a ranch and is recuperating in the hospital in Havre. On behalf of the United States and the Federal Team, I would like to thank the members of this Committee for giving us the opportunity to comment on the proposed water rights compact between the State of Montana and the Crow Tribe. We trust that our comments will assist the members of this Committee and the Montana State Legislature as it considers taking action on the proposed compact.

I also would like to commend the members of the Montana Reserved Water Rights Compact Commission and its staff, and the members of the Crow Tribal Negotiating Team and its staff, for the significant effort and resources brought to bear in the negotiations of the proposed Compact. That such remarkable progress on a proposed Compact was made in such a short period of time is in no small way attributable to the strenuous efforts of the Commission and the Tribal Team.

At the outset I want to emphasize that the United States has supported, and continues to support, the general goals identified by the State and the Tribe during the course of the negotiation process. Further, we appreciate the State's and Tribe's efforts toward attaining those goals which have included an extensive dialogue with the Federal Team on issues related to resolution of the Tribe's water rights claims.

Nonetheless, the active participation of the Federal Team in the settlement negotiations should not be interpreted as a commitment by the United States to support the Compact in its present form. Unfortunately, the United States continues to have a number of substantive concerns about the proposed Compact itself, and about the "global settlement" framework within which the Compact is supposed to function. These concerns prevent us at this time from being able to support ratification by the Montana State Legislature or from seeking the required approval by the United States Congress. The Federal Team has made every effort in good faith to identify our concerns to the State and the Tribe. I would like to briefly describe our concerns again for the benefit of the State Legislature.

First, regarding the substantive provisions of the Compact itself, the United States is concerned that the accelerated pace at which the proposed Compact was negotiated simply has not allowed sufficient time to fully and adequately consider all of the substantive issues arising from the Tribe's water rights claims. These concerns, which we already have flagged for the State and Tribal negotiation teams, must be adequately addressed before the United States can lend its support to the Compact. Attached to my testimony today is a list of our substantive concerns and of our proposed amendments which address those concerns. We are hopeful that the Montana State Legislature will take these proposed amendments to the Compact under advisement as it debates the proposed Compact.

Second, the United States is troubled that the accelerated pace with which the proposed Compact negotiations were conducted did not provide sufficient time to resolve fully all of the concerns of some agencies within the Department of the Interior. For example, the Bureau of Reclamation has indicated that it has some concerns regarding Big Horn Lake water availability, Pick-Sloan repayment, environmental compliance issues, and the potential impacts of the proposed Compact upon public power users. To satisfy these concerns, the Bureau needs several months to complete and assess technical studies related to these issues. We understand that the

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Western Area Power Administration, U.S. Department of Energy, shares these concerns as well, especially with regard to power production, Pick-Sloan repayment, and impacts upon public power users. While some of these issues relate to the federal contribution to the Compact, they are real concerns and should be addressed prior to this legislature ratifying the Compact. Additionally, the National Park Service has indicated that it is concerned about potential impacts of the proposed Compact upon water availability and fish, wildlife and recreation in the Big Horn Canyon National Recreation Area. While the United States does not expect these concerns to seriously jeopardize the water-related elements of the proposed Compact, the United States is committed to ensuring that the potential impacts of the proposed Compact are fully understood prior to the United States supporting it.

Finally, and most important, the parties have not adequately addressed several very important issues directly related to the explicit agreement that the Compact should fit within a broader, "global settlement" not only of the Tribe's water claims, but also of its claims against the United States related to violations of Section 2 of the Crow Allotment Act, ch. 224, 41 Stat. 751 (1920), and of the Tribe's severance tax claims against the State. While the United States generally supports of the global settlement approach, we believe that the financial obligations and contributions of all parties to a Crow global settlement, including the United States, must be expressly delineated prior to agreement and ratification of individual elements (including the Water Compact) of the settlement by any of the parties. At this time, relatively little consideration has been given to the financial contributions that the United States will make toward a settlement of the Tribe's water rights and Section 2 claims. Indeed, on March 30, 1998, the United States appointed a federal negotiation team that has only just begun to explore the possibilities of a settlement of the Section 2 issues with the Tribe. Any expectation of a significant federal contribution to the global settlement cannot be justified at this time without further resolution of the Tribe's water rights, severance tax and Section 2 claims.

Similarly, the United States is concerned that the State contribution delineated in the proposed legislation is much too low, particularly when viewed in light of the expectation of substantial federal contribution identified in the Tribe's initial proposal and in light of the substantial benefits that will be realized by the State and other non-Indians in the Big Horn River and Yellowstone River basins. We note that the Criteria and Procedures for Indian Water Rights Settlements, 55 Fed. Reg. 9223, specifically requires that settlements "should include non-Federal cost-sharing proportionate to the benefits received by the non-Federal parties." In this case, the non-Federal parties stand to gain significant benefits, such as the protection of existing non-Indian water uses and the protection of recreational and economic interests associated with Big Horn River flows. In sum, the United States can support neither a water rights settlement wherein the non-federal contribution is particularly low nor a settlement wherein the expected federal contribution remains indeterminate.

Of all our listed concerns, the major issue is The Streamflow and Lake Level Management Plan. The proposed compact provides for further negotiations within a year after ratification by the Legislature. The United States is concerned that negotiating the terms of the Management Plan within the context of a ratified compact will place undue and unfair limitations on what can be negotiated. Additionally, the United States continues to be concerned that the proposed language on a portion of the Bighorn Lake Storage places an improper emphasis on specific uses and that the language quantifying the water right for the Ceded Strip is inappropriate as a matter of form and content. While the United States cannot support the ratification at this time, we are hopeful that the concerns of the United States can be met in the near future and the United States will be able to offer its support for a full and final settlement of the Crow Tribe's federally reserved Indian water rights claims within the State of Montana. Let me again sincerely thank the members of this Committee for allowing us the opportunity to comment on the proposed Crow Water Rights Compact.

1. Use of storage from Bighorn Lake Page 7 of Legislative Council 0001.1
Article III.A.1.b.(1).(b).

The United States believes that the parties agreed that the 300,000 Acre Feet per Year (AFY) allocation from Bighorn Lake would be divided into two parts. The first 150,000 AFY can be used in addition to the Natural Flow right. The second 150,000 AFY, when available, would be used as a supplement to the natural flow. The United States has argued that the language for the second 150,000 AFY has not been clear and was subject to interpretations. After the public meetings in May, changes were made that have improved the clarity of this provision. We continue to be concerned about clarity, especially because of the provision in subpart (i) that refers to the streamflow and lake level management plan. Reference is already made to the plan in subpart (1) and thus a second reference to the plan in (i) causes a concern that a priority is being expected for the at least the status quo.

2. Streamflow and Lake Level Management Plan Page 9 of Legislative Council 0001.1
Article III.A.7

The United States believes that deferral of an agreement on the Streamflow and Lake Level Management Plan until after the ratification of the Compact by the Montana Legislature is a mistake. The primary source of water for development on the Crow Reservation is the Bighorn River. Because of Compact provisions concerning existing use on the Little Bighorn River and Pryor Creek, the Natural Flow right in the Bighorn River and the storage allocation from Bighorn Lake provide the only consistent water source for new development in any water basin within the Reservation. Fishery and recreation interests within the State government and special interest groups in the private sector have made statements that can be interpreted as expecting, even demanding, that consumptive water developments are to be subordinated to optimal instream flows for the fishery. The United States believes that the Tribe's right to water use must be first recognized and then the Tribe can exercise its governmental discretion on how to use the right.

As the parties negotiate the Management Plan, pressure will be brought to bear to maintain the status quo and leave the water in the stream. In the give and take of negotiating this issue, the parties need to have all resources available to offer. If the Compact is ratified by the legislature, the State will lose flexibility for negotiation. The United States is concerned that a regular response of the State will be that it cannot consider an option because it is covered by a provision in the ratified compact.

3. Ceded Strip Page 20 of Legislative Council 0001.1
Article III.F.

The United States has argued that to be consistent with the provisions of 85-2-234 (MCA 1999), (final decree for the general stream adjudication), the Compact must address, in one place, all water use within a particular basin. The Commission staff believes that it is proper to separate out the water rights for the Ceded Strip from the water rights in the other basins on the Crow Reservation. The Compact provides a separate section on the Ceded Strip, which contains several basins. We acknowledge that the Ceded Strip provision does identify all the parts to a

water right as required by the above cited statute. Time will tell as to whether water users and administrators understand how to read the Compact or are confused and whether the Montana Water Court will accept this substantive modification.

The United States believes it is important to point out one other concern related to the Ceded Strip provision. The Montana Code at 85-2-234(6)(e) and (g) requires that a final decree contain specific provisions that identify "the place of use and a description of the land, if any, to which the right is appurtenant" and "the place and means of diversion." We believe that the inclusion of limits on the place of use in provisions relating to "Place and Means of Diversion" is inappropriate as a matter of form and content. In addition, such an inclusion creates an irreconcilable ambiguity and conflict with the Ceded Strip provisions in Article III.F.. We request that the language "for use within the Reservation" be deleted from subsection 4 in Sections III.A., C., D., and E., and "for use within the Reservation or in connection with Tribal Interests in the Ceded Strip subject to the terms and conditions in Section F., of Article III and Section C.2.b., of Article IV" from subsection 4 of Section III.B. Finally, there is no separate provision addressing place of use, as there is in subpart F.1.b. of Article III, discussing the Ceded Strip.

In addition, the restrictions of water use to "within the reservation" in all the places of use in subsections 5 of Sections III.A., B., C., D., and E., without including "and the Ceded Strip as provided in Section F of Article III" also create an ambiguity and a conflict with the Ceded Strip provisions. We note that subsection 5 in all the Sections noted above is entitled "Purpose." According to 85-2-234(d) and (e), purpose and place of use should be addressed separately.

EXHIBIT 20
DATE 6/16/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Representative Hal Harper

For the House Natural Resources Committee

Prepared by Gregory Petesch
June 15, 1999 (3:48PM)

1. Page 9, line 12.
Following: "State."
Insert: "The Montana legislature intends that the streamflow management plan should provide enforceable mechanisms that protect the long-term biological viability of the blue ribbon wild trout fishery on the Bighorn River between Two Leggins diversion and Yellowtail Afterbay Dam to the Two Leggins diversion."

- END -

EXHIBIT 21
DATE 6/16/99
SB 1

Amendments to Senate Bill No. 1
1st Reading Copy

Requested by Representative Bill Eggers

For the House Natural Resources Committee

Prepared by Gregory Petesch
June 16, 1999 (8:52AM)

1. Page 37, line 23.
Following: "any"
Insert: "Crow allottee or"

- END -

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 6/16/99

BILL NO. SB1 SPONSOR(S) Sen Cole / Rep Stovall

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Charlene M. Laverdure	P.O. Box 5-59066 Pryor	Crow Tribe
P O I	John C Chaffin	Billings MT	Federal Negotiation Team
P O I	LeRoy M. Not Afraid	Billings, MT.	Crow Tribe
P O I	Gerald Realwolf	Crow Agency	Crow Tribe
P O I	Urban J, Bear-Don't Walk	P.O. Box 1593 Billings MT 59103	Crow Tribe
P O I	Linda Red Light	Box 34 Crow Agency	Crow Tribe
P O I	Tyrone Ten Bear	Crow Agency	Crow Tribe
P O I	David Tucks Plenty Jr.	Bigs MT.	Crow Tribe
P O I	Phil Beaumont	Pryor	Crow Tribe
P O I	Joe Lamson	ORI	ORI - Nancy Keenan
P O I	Paulette Not Afraid	Crow Agency	Crow Tribe
P O I	Diane Not Afraid	Crow Agency	Crow Tribe
P O I	Andrew Russell	Crow Agency	Crow Tribe
P O I	George Ochenski	Helena	—

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 6/16/99

BILL NO. SB1 SPONSOR(S)

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Joe Mazurek	Box 201401	MT AG
P O I	Chris Tweeten		RWRCC
P O I	Arthur Adams Jr	Billings	Crow Tribe
P O I	JACK STULTS	HELENA	DNRC
P O I	Ed BARTLETT	40 E Broadway BUTTE	MONTANA POWER Co.
P O I	Clint McFarland	6530 Fayetteville Rd MOLT MT	Yellowstone CD Treasurer + Bighorn CD
P O I	Sery Jones	Box 613 Busby MT	Bighorn Livestock Ass.
P O I	Lila V. Taylor HD5	Box 515 Busby	Area I HD5
P O I	Pat Graham	Helena	Fish, Wildlife + Parks
P O I	John Flaherty	Box 1165 Helena	MT. Stockgrowers
P O I	Susan Cottingham	1625 11TH	RWRCC
P O I			
P O I			
P O I			

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE_____

BILL NO._____ SPONSOR(S)_____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Gladys Red Wolf	PO Box 163 Wyola, MT 59089	CROW TRIBAL EPA
P O I	Norma Frail Paulette	Box 747 Crow Agency MT	Crow Tribal
P O I			
P O I			
P O I			
P O I			
P O I			
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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 6/16/99

BILL NO. SB1 SPONSOR(S) Sen. Cole/Rep. Stovall

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
POI			
POI	HAROLD G. STANTON	BX 907 - HARDIN, MT 59034	BIG HORN - LOW LINE DITCH CO.
POI	Bernda Frost	1406 Bench Blvd	Crow Tribe
POI	Clara Howe	Box 32 Lodge Grass MT	Crow Tribe
POI	Elaine M. Pease	BOX 293 Lodge Grass MT	Crow Tribe
POI	Bob Kelly	P.O. Box 28 Pryor, MT	Crow Tribe
POI	CEDRIC BLACKEAGLE	LODGE GRASS	CROW TRIBE
POI	Bernard Cummins	Lodge Grass	Crow Tribe
POI	LAURA ZIEMER	Bozeman	TROUT UNLIMITED
POI	BRUCE FARLING	Missoula	TROUT UNLIMITED
POI	Dennis BigHair SR	Carry office Mt. PO Box 32	CROW TRIBE, SEC.
POI	Dan Scott	Dayton Wyo	Crow Leaseholders Assn.
POI	Cornelius LittleLight	Pryor Mt.	Crow Tribal Council
POI	Ernie Robinson	Lame Deer	Northern Cheyenne

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

6/16/99

Chairman Bill Tash 9 AM

Page 198

Tape

017 Sen. Cole SB1 - Open
SD4

Ratify Compact between
Crow + MT

Background

3 types of water right
① Reparian right — if next to Indians have right
② appropriation rights
1st in line, 1st in right
* ③ reserved water right

Court Case law vs statute

today < Water Right Compact
Section II of 1920 allotment act

116 Procedures - Rep. Tash

Exhibits 1+2

131 ~~Introduction~~ - Chairman Clara Nomee
- Information - Rides the White Hip Horse

Unanimous Crow support
Settlement of 80- year dispute
between Crow + U.S. Gov't
1949 - Crow Constitution established Tribal
Council - all adult enrolled
members of the Crow Tribe
meets 4 x a year
asked
Resolution 99-____ be made a part
of the record

Settle → Water Rights, Coal Severance Tax, Section II

Big Picture - opportunity to buy back Rez. land

570
28 farms
Ag Land
Expansion

360

Tape — Clara Nomee Spoke to

344 - Opposition

375 - Goals for tribe

397 - Bill Tash - instruction - 10 min. each person
1 hr. each side

423 - Chris Tweeten - Chair, Water Compact Commission
& Paints

① by statute - conduct negotiations
govt. to govt. -
All communication is done
this way - recognize tribal
sovereignty

Side B -
001 further info on steps to have the Compact ratified

② Testimony of provisions -
questions should be addressed
to people on 5 negotiating
parties

Bergan
024 Paige Bergman - Compact Review -
Exhibits ~~1, 2, 3, 4, 5, 6~~
3-10 ~~7, 8~~

188 Instruction

~~193~~ Proponents

201 Maguire - AG - role to provide legal
advice to Compact Commission

308 Jack Stultz - DNRC - Water Resources Div.
Yellowstone Compact Commission
of 1951

Tape
434 Ernie Robinson - Northern Cheyenne Tribal Council

Tape 2.
Side A
017 Clint McDaniel - Supr. Conservation Board
Yellowstone
supports + urges ratification

027 Cedric Black Eagle - Crow - Water rights Consrv. Team
member of opposition to Crow Admin.
but supports Compact agreement
1868 priority date

60 David Tuttle Hogg, Jr. - Crow - sees Compact
as preserving water rights for
Crow Children

111 Pat Graham - Dir. DFWP - supports Exhibit # 11

185 Dennis Big Hair ? Sr., Tribal Secy.
? (1825) Treaty

271 Laura Zeimer - Trout Unlimited Attorney

342 Harold G. Stanton - Attorney - Hardin since 1953

408 James Karaki - Hardin - Attorney Yellowstone Water issues assoc.

Side B
000 Jerry Jore - Rancher Exhibits 12, 13

014 Elaine Pease - Elder - Crow Tribe -

Page 198

Tape

059 Bob Kelly - Crow - ~~Exhibits~~ Exhibit 14

149 Tuda Frost - Crow

153 John Bloomquist - Stockgrower

159 Don Scott - Crow Leaseholder Assoc Exhibit 15 16

166 Pat Riley -

180 Cummings

185 Ronnie Jobe - Sen.

190 Joe Kanken - OPI

192 Lila Taylor - Rep

202 Phil Beaumont, Sr. Crow (Mr. Jess)

234 Art Alden, Jr. Crow (Last of Names) Exhibit 17

250 Charlene Lapenda

256 Mary Little Light

262 Tyrone Ten Bear - Crow

277 Monica Linden - Rep.

284 Linda Little Light - Crow

Opponents

309 Rep. Eggers - Litigation likely

Tape 3, Side A

22 Leroy Not Afraid - Crow

130 Gerald Red Wolf Jr. Crow

167 John Chaffin Exhibit 18

369 Rep. Eggers - Continuation summary → (Amendment) Exhibit 19

Questions

Side B - Yonkin - Tweeten re: allottee

002

071 Yonkin - Tweeten re: taking

105 Yonkin - Tweeten re: 500,000 acre feet irrigable acres of allottees

Tape

120 Yaurkin - Chaffin — rebuttal

re: federal water right

133 re: USA responses to Eggers Comm

142 Raney - Eggers re: Yaurkin - Tweeten questions

Allattees

227 Raney - Magnuson / Tweeten

280 Raney - Tweeten

300 Raney - Tweeten Winters Lawsuit

340 Raney - Tweeten takings

Tape 4, Side A

001 Bob Lane - Raney re: DFWP instream flow

044 Raney - Lane re: fast track & fishery

Lane - protect fishery resource

068 McGee - Eggers. Who is Susan Williams

v why should they listen to her

does [illegible] not own water

but right to use water

156 McGee - Tweeten did he review handout

no

Give his opinion

Walton - Allottees have some water rights

Can take all water rights without consent of Congress, no

283 Ericksen - ~~Chris Hunter~~ Magnuson

Tape

327 Ericksen - Chris Hunter, DFWP Biologist
re: MOA
Fisheries need for cfs
Confidence level to succeed
is confident re: Bob Kelly

395 Gutsche - Choffin — fair figure - How to reach
Judicial position
st. controls = to benefit derived

Side B

~~000~~ Gutsche - Mazurek — fair amt
3 x proposed
settlement amount

045 Chairman Nash - Clarification & parameters
back to scope of bill

059 Curtis -
Nash - ruled question out of order

096 Curtis - Tweeten - diversion
Faye Burgess

116 Stovall - Kelly - Water management
on the river & MOU

183 Stovall - Tweeten - "tribal member" is
a broader statement than
"allottee"

228 Stovall - Comments - delay for executive action

244 Story - Choffin

287 Story - Choffin

310 Story - Traveler
344 Sen Call - Close

Executive Action Page 738

385 Motion Yaunkin - Do Pass -

Tape 5, Side A

004 Motion - Amendments - Harper Exhibit 2
017 Discuss - Harper
044 McGee - supports amendment
Amend amendment
strike "Big Horn River between Two Eggers dimension and"
060 Stovall resists amendment

073 Tash - comment -? Compromise purpose if amend
075 Raney - Harper -
113 Hurdle - supports amendment
125 Oks - opposes amendment

137 Erickson - supports amendment
146 Story - oppose amendment
161 Harper - Close on amendment -
200 Staff Clarification on amendment
210 - Vote Roll call 12-8

Motion
224 SB102 - Amendment - Eggers Exhibit 3
241 Discuss
Story
251 Eggers
274 Story -
294 Yaunkin - resist amendment
316 Stovall - opposed amendment
331 Hurdle - Eggers - Clarify amendment
362 Ewer - Eggers -
450 Story - Opposed amendment

Side B - Eggers Close
001

Tape

Page 898

025 Vote Eggers Amendment 8-12

030 Vote Do Pass as Amended 14-6

47 Adjourn 1:40

HB 2 passed as follows:

Ayes: Ahner, Andersen, Anderson, Barnett, Beck, E. Bergsagel, Bitney, Bookout-Reinicke, Brown, Buzzas, E. Clark, R. Clark, Cobb, Curtiss, Dale, Davies, Dell, Eggers, Erickson, Ewer, Facey, Fisher, Fuchs, Gallus, Gillan, Grinde, Guggenheim, Hagener, Haines, Hanson, Harrington, Hedges, Hibbard, Holden, Jackson, Johnson, Juneau, Kasten, Kitzenberg, Krenzler, Lenhart, Masolo, Matthews, McCann, McCulloch, McGee, Menahan, Mercer, Molnar, Mood, Noennig, Ohs, Pavlovich, Quilici, Rehbein, Rose, Ryan, Schmidt, Shockley, Simon, Sliter, Smith, Soft, Somerville, Squires, Story, Stovall, Tash, Taylor, Thomas, Trexler, Tropila, Tuss, Walters, Williams, Witt, Younkin, Zook
Total: 78

Nays: Barnhart, P. Bergsagel, Brainard, P. Clark, Galvin-Halcro, Golie, Gutsche, Harper, Hurdle, Jore, Lawson, Lindeen, Mangan, Orr, Peck, Raney, Swanson, Vick, Wagner, Wyatt
Total: 20

Absent or not voting: none
Total: 0

Excused: Adams, McKenney
Total: 2

ANNOUNCEMENTS

Committee meetings were announced by committee chairmen.

Representative Grinde moved that the House recess until 2:00 p.m.

House recessed at 8:30 a.m.

House reconvened at 2:00 p.m. Quorum present.

REPORTS OF STANDING COMMITTEES

Signed by the Speaker at 1:15 p.m., June 16, 1999: **HB 1, HB 2.**

NATURAL RESOURCES (Tash, Chairman): 6/16/1999
SB 1, be amended as follows:

1. Page 9, line 12.
Following: "State."
Insert: "The Montana legislature intends that the streamflow management plan should provide enforceable mechanisms that protect the long-term biological viability of the blue ribbon wild trout fishery on the Bighorn River from the Yellowtail Afterbay Dam to the Two Leggins diversion."

And, as amended, be concurred in. Report adopted.

TRANSPORTATION (Anderson, Chairman): 6/16/1999
SB 2, be concurred in. Report adopted.

MESSAGES FROM THE SENATE

House bills concurred in and returned to the House: 6/16/1999

HB 1, introduced by Stovall
HB 2, introduced by Zook

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Representative Grinde moved the House resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Representative Simon in the chair.

Mr. Speaker: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 1 - Representative Stovall moved **SB 1** be concurred in.

SB 1 - Representative Eggers moved **SB 1**, second reading copy, be amended as follows :

1. Page 37, line 23.
Following: "any"
Insert: "Crow allottee or"

Amendment failed as follows:

Ayes: Barnhart, Beck, Brainard, Buzzas, P. Clark, R. Clark, Cobb, Curtiss, Eggers, Erickson, Facey, Gallus, Galvin-Halcro, Gillan, Gutsche, Hurdle, Jore, Juneau, Lenhart, Mangan, Molnar, Orr, Peck, Raney, Smith, Tuss, Williams, Wyatt
Total: 28

Nays: Ahner, Andersen, Anderson, Barnett, E. Bergsagel, P. Bergsagel, Bitney, Bookout-Reinicke, Brown, E. Clark, Dale, Davies, Dell, Ewer, Fisher, Fuchs, Golie, Grinde, Guggenheim, Hagener, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Holden, Jackson, Johnson, Kasten, Kitzenberg, Krenzler, Lawson, Lindeen, Masolo, Matthews, McCann, McCulloch, McGee, Menahan, Mercer, Mood, Noennig, Ohs, Pavlovich, Quilici, Rehbein, Rose, Ryan, Schmidt, Shockley, Simon, Sliter, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tropila, Vick, Wagner, Walters, Witt, Younkin, Zook
Total: 70

Absent or not voting: none
Total: 0

Excused: Adams, McKenney
Total: 2

Motion that **SB 1** be concurred in carried as follows:

Ayes: Ahner, Andersen, Anderson, Barnett, Beck, E. Bergsagel, Bitney, Bookout-Reinicke, Brown, Buzzas, E.

Clark, R. Clark, Cobb, Dale, Dell, Erickson, Ewer, Facey, Fisher, Fuchs, Gallus, Gillan, Golie, Grinde, Guggenheim, Hagener, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Holden, Jackson, Johnson, Juneau, Kasten, Kitzenberg, Krenzler, Lawson, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McGee, Menahan, Mercer, Molnar, Mood, Noennig, Ohs, Pavlovich, Quilici, Rehbein, Rose, Ryan, Schmidt, Shockley, Simon, Sliter, Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tropila, Tuss, Walters, Williams, Witt, Wyatt, Younkin, Zook
Total: 81

Nays: Barnhart, P. Bergsagel, Brainard, P. Clark, Curtiss, Davies, Eggers, Galvin-Halcro, Gutsche, Hurdle, Jore, Lenhart, Orr, Peck, Raney, Vick, Wagner
Total: 17

Absent or not voting: none
Total: 0

Excused: Adams, McKenney
Total: 2

Representative Grinde moved the committee rise, report progress, and beg leave to sit again. Motion carried. Committee arose. House resumed. Mr. Speaker in the chair. Chairman Simon moved the Committee of the Whole report be adopted. Report adopted.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 1 concurred in as follows:

Ayes: Ahner, Andersen, Anderson, Barnett, Beck, E. Bergsagel, Bitney, Bookout-Reinicke, Brown, Buzzas, E. Clark, R. Clark, Cobb, Dale, Dell, Erickson, Ewer, Facey, Fisher, Fuchs, Gallus, Gillan, Golie, Grinde, Guggenheim, Hagener, Haines, Hanson, Harper, Harrington, Hedges, Hibbard, Holden, Jackson, Johnson, Juneau, Kasten, Kitzenberg, Krenzler, Lawson, Lindeen, Mangan, Masolo, Matthews, McCann, McCulloch, McGee, Menahan, Mercer, Molnar, Mood, Noennig, Ohs, Pavlovich, Quilici, Rehbein, Rose, Ryan, Schmidt, Shockley, Simon, Sliter, Smith, Soft, Somerville, Squires, Story, Stovall, Swanson, Tash, Taylor, Thomas, Trexler, Tropila, Tuss, Walters, Williams, Witt, Wyatt, Younkin, Zook
Total: 81

Nays: Barnhart, P. Bergsagel, Brainard, P. Clark, Curtiss, Davies, Eggers, Galvin-Halcro, Gutsche, Hurdle, Jore, Lenhart, Orr, Peck, Raney, Vick, Wagner
Total: 17

Absent or not voting: none
Total: 0

Excused: Adams, McKenney
Total: 2

SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)

Senator Harp moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Crippen in the chair.

We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 1- House Amendments - Senator Cole moved the House Amendments to SB 1, be concurred in. Motion carried as follows:

Yeas: Bartlett, Beck, Berry, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Doherty, Eck, Ekegren, Ellingson, Franklin, Glaser, Grimes, Grosfield, Harp, Hertel, Jabs, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Shea, Stang, Swysgood, Taylor, Thomas, Waterman, Wells, Wilson, Mr. President.
Total 38

Nays: Devlin, Ellis, Hargrove, Holden, Toews.
Total 5

Absent or not voting: None
Total 0

Excused: Bishop, Bohlinger, Halligan, Keenan, Roush, Sprague, Tester.
Total 7

Senator Harp moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Crippen in the chair. Chairman Crippen moved the Committee of the Whole report be adopted. Report adopted unanimously.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 1, as amended by the House, passed as follows:

Yeas: Bartlett, Beck, Berry, Christiaens, Cocchiarella, Cole, Crismore, DePratu, Doherty, Eck, Ekegren, Ellingson, Glaser, Grimes, Grosfield, Harp, Hertel, Jabs, Jergeson, Keating, Lynch, Mahlum, McCarthy, McNutt, Mesaros, Miller, Mohl, Nelson, Roush, Shea, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Waterman, Wells, Wilson, Mr. President.
Total 40

Nays: Devlin, Ellis, Franklin, Hargrove, Holden.
Total 5

Absent or not voting: None
Total 0

Excused: Bishop, Bohlinger, Halligan, Keenan, Tester.
Total 5

Paired Votes: Nays: Devlin, Hargrove.
Yeas: Roush, Sprague.

MOTIONS

Majority Leader Harp moved that the President be authorized to appoint a committee to notify his Excellency, The Governor, that the Senate of the 56th Special Legislative Session is ready to adjourn sine die. Motion carried. The President appointed Senator Hargrove, Chairman, Senator Wells and Senator Nelson.

Majority Leader Harp moved that the President be authorized to appoint a committee to notify the House of Representatives that the Senate of the 56th Special Legislature is ready to adjourn sine die. Motion carried. The President appointed Senator Thomas, Chairman, Senator Ellis and Senator Ellingson.

Majority Leader Harp moved that the President be authorized to appoint a committee to notify the Chief Justice and Justices of the Montana Supreme Court that the Senate of the 56th Special Legislative session is ready to adjourn sine die. Motion carried. The President appointed Senator Mesaros, Chairman, Senator Keating and Senator Wilson. Committees were discharged to perform their duties.

Majority Leader Harp moved that the Senate stand at ease subject to the call of the chair. Motion carried.

The Senate resumed. The committee to notify the Governor reported that the Governor had been notified. President Crippen dismissed the committee.

The committee to notify the Chief Justice and Justices reported that the Chief Justice and Justices had been notified. President Crippen dismissed the committee.

The Committee from the House, Representatives Ohs, Tropilia, Sliter and Williams, informed the Senate that the House was ready to adjourn sine die.

The committee to notify the House of Representatives reported that the House had been notified. President Crippen dismissed the committee.

Majority Leader Harp moved that the Senate adjourn sine die. Motion carried.

The Special Session of the 56th Legislature adjourned sine die at 3:40 p.m., Thursday, June 16, 1999.

ROSANA SKELTON
Secretary of the Senate

BRUCE CRIPPEN
President of the Senate

REPORTS OF STANDING COMMITTEES

Delivered to the Governor for his approval at 5:10 p.m., June 17, 1999: SB 1, SB 2, HB 1, HB 2.

CHAPTER NO. 2

[HB 2]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FIRST SPECIAL SESSION OF THE 56TH LEGISLATURE CONVENING JUNE 15, 1999, AND FOR OTHER RELATED LEGISLATIVE PURPOSES; PROVIDING TECHNICAL CORRECTIONS IN RELATION TO CERTAIN APPROPRIATIONS MADE DURING THE REGULAR SESSION OF THE 56TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation for special session. The following amounts are appropriated from the general fund to the legislative branch (agency 1104) for the fiscal year ending June 30, 1999, for costs of the special legislative session of June 1999:

1. Senate (25)	$29,000
2. House of Representatives (26)	50,000
3. Legislative Services Division (22)	2,000

Section 2. Technical adjustment to department of livestock appropriation. There is appropriated $50 from the general fund to the department of livestock, alternative livestock programmatic environmental impact statement program (biennial/OTO), to meet the requirement of section 30, Chapter 574, Laws of 1999 (Senate Bill No. 361), that the 1999 legislature appropriate a total of $67,050 lest Senate Bill No. 361 be void.

Section 3. Appropriation for Chapter 563, Laws of 1999. There is appropriated to the department of administration $600,000 for fiscal year 2000 and $600,000 for fiscal year 2001 from coal producer's license tax proceeds allocated to the department in section 16(4), Chapter 563, Laws of 1999. The appropriation is for tax increment financing industrial districts.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved June 22, 1999

CHAPTER NO. 3

[SB 1]

AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE CROW TRIBE AND THE STATE OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Crow Tribe-Montana compact ratified. The compact entered into by the State of Montana and the Crow Tribe and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on June__, 1999, is ratified. The compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY
THE STATE OF MONTANA,
THE CROW TRIBE,
AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Crow Tribe, and the United States of America for the purpose of settling any and all existing water rights claims of or on behalf of the Crow Tribe of Indians in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1975, the United States, on behalf of the Crow Tribe, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights, see, U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. §666(a)(1)(1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Crow tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Crow Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the lands and waters constituting the Crow Indian Reservation and Tribal Interests in the Ceded Strip were part of the area recognized as the territory of the Crow Indians under the Treaty of Fort Laramie of September 17, 1851 and also were part of the area set apart for the Crow Tribe under the Treaty of Fort Laramie of May 7, 1868; and

WHEREAS, for the purposes of this Compact, the priority date for the Tribal Water recognized is May 7, 1868, which is the senior water right on the water sources covered by this Compact;

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, Northern Cheyenne Tribe v. Adsit, 721 F.2d 1187, 1189 (9th Cir. 1983); and

WHEREAS, the adjudication of Crow tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Crow Tribe within the State of Montana; and

WHEREAS, the Crow Tribal Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 99-33; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact

on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986, Supp. 1992), inter alia; and

WHEREAS, the Crow Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of all the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all Parties that the water rights claims of the Crow Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States; and

WHEREAS, in settling the water rights claims of the Crow Tribe the Parties do not intend to alter or amend or to adopt or preclude any interpretation of the Yellowstone River Compact (Act of October 10, 1951, ch. 629, 65 Stat.663 (1951));

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Crow Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

2. "Acre Feet Per Year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

3. "Adverse Affect" or "Adversely Affect" means interference with or to interfere with the reasonable exercise of a water right.

4. "Bighorn River Basin" means Water Court Basin 43P, the mainstem of the Bighorn River and its tributaries (exclusive of the Little Bighorn River and its tributaries) within Montana to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

5. "Bighorn Lake" means the body of water impounded on the Bighorn River by Yellowtail Dam, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana.

6. "Board" means the Crow - Montana Compact Board established by Section F, of Article IV of this Compact.

7. "Ceded Strip" means the area covered by Article III of the Act of April 27, 1904 (33 Stat.352), as depicted on the map attached as Appendix 5.

8. "Change in Use" as applied to the Tribal Water Right, means a change in the point of diversion, the place of use, the purpose of use, or the place or the means of storage.

9. "Clarks Fork Yellowstone River Basin" means Water Court Basin 43D, the mainstem of the Clarks Fork Yellowstone River and its tributaries from the Montana-Wyoming border to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

10. "Crow Irrigation Project" means the irrigation project authorized by the Act of March 3, 1891 (26 Stat. 989, 1040) managed by the United States, Department of the Interior, Bureau of Indian Affairs, as of the date this Compact has been ratified by the Montana legislature, consisting of the following project units: Agency, Big Horn, Forty Mile, Lodge Grass #1, Lodge Grass #2, Pryor, Reno, Soap Creek, and Upper Little Horn; and including land held in trust by the United States for the Tribe or a Tribal member within the Bozeman Trail and Two Leggins districts which are managed by private irrigation associations as of the date this Compact has been ratified by the Montana legislature.

11. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

12. "Effective Date" means the date on which the Compact is ratified by the Crow Tribal Council, by the Montana legislature, and by the Congress of the United States, whichever date is latest.

13. "Groundwater" means any water that is beneath the ground surface.

14. "Little Bighorn River Basin" means Water Court Basin 43O, the mainstem of the Little Bighorn River and its tributaries from the Montana-Wyoming border to its confluence with the Bighorn River, as depicted on the map attached as Appendix 2.

15. "Natural Flow" means water that would exist in the Bighorn River and its tributaries in the absence of human intervention.

16. "Parties" means the Tribe, the State, and the United States.

17. "Person" means an individual or any other entity, public or private, including the State, the Tribe, and the United States and all officers, agents, and departments of each of the above.

18. "Pryor Creek Basin" means Water Court Basin 43E, the mainstem of Pryor Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

19. "Recognized Under State Law" when referring to a water right, means a water right arising under Montana law or a water right held by a nonmember of the Tribe on land not held in trust by the United States for the Tribe or a Tribal member.

20. "Release" means to discharge water from storage, or the discharge of water from storage.

21. "Reservation" means the Crow Indian Reservation consisting of the area as presently set apart for the Crow Tribe pursuant to the following Treaty and laws: Article 2 of the Fort Laramie Treaty of May 7, 1868 (15 Stat. 649); the Act of April 11, 1882 (22 Stat. 42); the Act of March 3, 1891 (26 Stat. 989); the Act of April 27, 1904 (33 Stat.352); the Act of August 31, 1937 (50 Stat. 884); and, the Act of November 2, 1994 (108 Stat. 4636), as depicted on the map attached as Appendix 4.

22. "Rosebud Creek Basin" means Water Court Basin 42A, the mainstem of Rosebud Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

23. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

24. "Shoshone River Basin" means Water Court Basin 43N, the mainstem of the Shoshone River and its tributaries within Montana, as depicted on the map attached as Appendix 2.

25. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof.

26. "Tongue River Basin" means Water Court Basin 42B, the mainstem of the Tongue River and its tributaries from the Montana-Wyoming border to above and including Hanging Woman Creek, as depicted on the map attached as Appendix 2.

27. "Transfer" as applied to the Tribal Water Right, means to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.

28. "Tribal Water Resources Department" or "TWRD" means the Crow Tribal Water Resources Department, or any successor agency.

29. "Tribal Interests in the Ceded Strip" means all present and acquired interests in real property, including mineral interests, held in trust by the United States for the Tribe or Tribal members within the Ceded Strip, consisting of: Crow Indian allotments held in trust by the United States for the Tribe or Tribal members; interests restored to the Tribe pursuant to the Act of May 19, 1958 (72 Stat. 121), as modified by the Act of August 14, 1958 (72 Stat. 575); and other interests held in trust by the United States for the Tribe or Tribal members.

30. "Tribal Water Right" means the right of the Crow Tribe, including any Tribal member, to divert, use, or store water as described in Article III of this Compact.

31. "Tribe" means the Crow Tribe and all officers, agents, and departments thereof.

32. "United States" means the federal government and all officers, agencies, and departments thereof.

33. "Yellowstone River Basin between Bighorn River and Tongue River" means Water Court Basin 42KJ, the mainstem of the Yellowstone River and its tributaries between Bighorn River and Tongue River, as depicted on the map attached as Appendix 2.

34. "Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River" means Water Court Basin 43Q, the mainstem of the Yellowstone River and its tributaries between Clarks Fork Yellowstone River and Bighorn River, as depicted on the map attached as Appendix 2.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 43P: Bighorn River.

1. Quantification - Source - Volume.

a. Natural Flow. The Tribe has a quantified water right to the Natural Flow of the Bighorn River for current uses developed as of the date this Compact has been ratified by the Montana legislature and new development within the Reservation of 500,000 AFY. The use of this right is subject to Sections A.6. and A.8.a., of Article III, and the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III.

(1). The Tribe has a right to divert or use or to authorize the diversion or use of water from the Natural Flow of the Bighorn River within the Reservation, subject to the terms and conditions in Section C., of Article IV.

(2). The Tribe may change the source of water from the Natural Flow of the Bighorn River to surface flow or storage of any tributary within the Bighorn River Basin within the Reservation or to Groundwater within the Bighorn River Basin within the Reservation, subject to the terms and conditions in Section C.2.a., of Article IV.

(3). The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water from the Bighorn River as part of that project is a use of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III, in the Bighorn River Basin, and the use of this water shall be subject to federal law.

b. Storage in Bighorn Lake.

(1). Subject to the approval of, and any terms and conditions specified by, Congress and to the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III, the Tribe shall be entitled to an allocation of 300,000 AFY of water stored in Bighorn Lake. The Tribe and the State agree to seek as a part of that allocation the following:

(a). not more than 150,000 AFY of the allocation provided in Section A.1.b.(1)., of Article III may be used or diverted as authorized by the Tribe, subject to the terms and conditions in Section C., of Article IV; provided that, not more than 50,000 AFY may be used outside the Reservation subject to the terms and conditions in Section C.2.c., of Article IV. This storage allocation is in addition to the Natural Flow Tribal Water Right provided in Section A.1.a., of Article III.

(b). not less than 150,000 AFY of the allocation provided in Section A.1.b.(1) of Article III shall only be:

(i) managed so as to be available as a Release during low flow periods pursuant to streamflow and lake level management plan agreed to under Section A.7., of Article III; or

(ii) used for beneficial purposes including diversions for consumptive uses in years of excess Natural Flows and excess storage, if any, when unappropriated or unallocated water is available, and subject to the terms and conditions in Section C., of Article IV.

(2). All other water stored in Bighorn Lake, except for the 6,000 AFY currently allocated by contract to the Montana Power Company, or its successor-in-interest, and the 30,000 AFY allocated by Congress to the Northern Cheyenne Tribe, shall be used only for flood control, production of power, maintenance of instream flows, maintenance of lake levels and carryover storage, consistent with Section A.7., of Article III and federal law.

2. Priority Date.

a. Natural Flow. The priority date of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III shall be May 7, 1868.

b. Storage. The priority date of the Tribal Water Right to waters stored in Bighorn Lake set forth in Section A.1.b.(1)., of Article III shall be the priority date of the water right held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, and except for the 50,000 AFY that may be used outside the Reservation as provided in Section A.1.b.(1).(a)., of Article III, the Tribe may divert or permit the diversion of this water right from any place and by any means within the Reservation for use within the Reservation, provided that, any diversion structure of the Tribal Water Right upstream of the Two Leggins diversion on the Bighorn River will be constructed to bypass streamflows established or modified pursuant to Section A.7., of Article III.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections A.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State

Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Measures to prevent Adverse Affect may include Release of water from Bighorn Lake.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Streamflow and Lake Level Management Plan. Pursuant to this Compact, the Tribe, the Secretary, and the State shall develop a streamflow and lake level management plan for the Bighorn River, from the Yellowtail Afterbay Dam to a point immediately upstream of the Two Leggins diversion, and for Bighorn Lake. The streamflow and lake level management plan shall be agreed to within one (1) year after this Compact has been ratified by the Montana legislature. If the streamflow and lake level management plan is not agreed to by the Tribe, the Secretary, or the State the provisions of Section A.4.d., of Article VII apply. The streamflow and lake level management plan is not required to be implemented until the Effective Date of this Compact. The streamflow and lake level management plan may be modified at any time with the consent of the Tribe, the Secretary, and the State. The Montana legislature intends that the streamflow management plan should provide enforceable mechanisms that protect the long-term biological viability of the blue ribbon wild trout fishery on the Bighorn River from the Yellowtail Afterbay Dam to the Two Leggins diversion.

8. Basin Closure within the Bighorn River Basin.

a. In the Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, the DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

B. Basin 43O: Little Bighorn River.

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Little Bighorn River Basin, except as provided for in Sections B.6., and B.7.a., of Article III, and except for water apportioned to Wyoming, if any, as determined by a court of competent jurisdiction or Congress. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Little Bighorn River Basin as part of that project is a use of the Tribal Water Right set forth in Section B.1.a., of Article III, and the use of this water shall be subject to federal law. Water stored in Willow Creek Reservoir also is a use of the Tribal Water Right.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section B.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Little Bighorn River Basin within the Reservation for use within the Reservation or in connection with Tribal Interests in the Ceded Strip subject to the terms and conditions in Section F., of Article III and Section C.2.b., of Article IV.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Little Bighorn Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections B.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the

permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Little Bighorn River Basin.

a. In the Little Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

C. Basin 43E: Pryor Creek.

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Pryor Creek Basin within the Reservation, except as provided for in Sections C.6. and C.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Pryor Creek Basin as part of that project is a use of the Tribal Water Right set forth in Section C.1.a., of Article III, and the use of this water shall be subject to federal law.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section C.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Pryor Creek Basin within the Reservation for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections C.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights

protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Pryor Creek Basin.

a. In the Pryor Creek Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

D. Basin 42A: Rosebud Creek.

1. Quantification - Source - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Rosebud Creek Basin within the Reservation, except as provided for in Sections D.6. and D.7., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section D.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Rosebud Creek Basin for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Within the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Rosebud Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections D.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued within the Reservation is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. Outside the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin outside the Reservation are protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right to the same extent provided in the Northern Cheyenne - Montana Compact, Sections A.3.c.i. and ii., of Article II, 85-20-301, MCA. Protection from an assertion of senior priority in the exercise of the Crow Tribal Water Right for the Northern Cheyenne Tribal Water Right shall only be as provided in Section D.7., of Article III.

e. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, or outside the Reservation to the same extent provided in the Northern Cheyenne - Montana Compact, Section A.3.c.i. and ii., of Article II, 85-20-301, MCA.

f. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Protection of Northern Cheyenne Tribal Water Rights within the Northern Cheyenne Reservation.

a. Except as provided in Section G.2., of Article III, the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA, is protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right.

b. New development, Change in Use, or Transfer of the Crow Tribal Water Right shall not Adversely Affect the exercise of the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA.

8. Basin Closure within the Rosebud Creek Basin within the Reservation.

a. In the Rosebud Creek Basin upstream from the point that Rosebud Creek or any tributary of Rosebud Creek leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

E. Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River.

1. Quantification - Source - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Reservation within Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River, except as provided in Sections E.6. and E.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section E.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the drainages listed in Section E.1., of Article III within the Reservation for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal

Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections E.6.a.(1). and (2)., of Article III extends only to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in each drainage listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Reservation.

a. In the drainages listed in Section E.1., of Article III, upstream from the point that each stream or its tributaries leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

F. Tribal Water Right in the Ceded Strip.

1. Quantification - Source - Volume.

a. Tribal Interests in the Ceded Strip. As part of the Tribal Water Right, the Tribe has a right to divert a total of 47,000 AFY from surface flow, Groundwater, or storage within the Ceded Strip from portions of the Sarpy Creek drainage and Yellowstone River within Yellowstone River Basin between Bighorn River and Tongue River; Fly Creek drainage and Yellowstone River within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River; Pryor Creek Basin; and Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip; and, water imported to the Ceded Strip from the Little Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip. Diversion and use shall be subject to the terms and conditions in Sections C.1.c. and C.1.d., of Article IV.

(1). This 47,000 AFY is in addition to the Tribal Water Right set forth in Sections A.1., B.1., C.1., and E.1., of Article III, except that any diversion of this right from surface flow, Groundwater, or storage within the Bighorn River Basin shall be deducted from the Tribal Water Right as set forth in Section A.1., of Article III.

(2). No more than 47,000 AFY may be diverted and used in connection with Tribal Interests in the Ceded Strip from all water sources, provided that:

(a). no more than 2,500 AFY from all water sources including the Yellowstone River may be diverted upstream from the confluence of the Bighorn River and the Yellowstone River.

(b). no more than 7,000 AF may be diverted from all sources including the Yellowstone River in any month, provided that, aggregate uses from all sources not exceed 47,000 AFY.

b. Use limited to within the Ceded Strip. The Tribal Water Right of 47,000 AFY for use in connection with Tribal Interests in the Ceded Strip shall be used only within the Ceded Strip and shall not be considered a Change in Use or Transfer outside the Reservation for purposes of Section C.2.c., of Article IV.

c. Any portion of the 50,000 AFY set forth in Section A.1.b.(1).(a)., of Article III which may be used outside the Reservation may also be used in connection with Tribal Interests in the Ceded Strip in addition to the Tribal Water Right of 47,000 AFY set forth in Section F.1.a., of Article III.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section F.1.a., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

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4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means for use in connection with Tribal Interests in the Ceded Strip within the Ceded Strip.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip may be used for beneficial purposes allowed by Tribal, federal and state law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law affected by the exercise of the Tribal Water Right in the Ceded Strip with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections F.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation Nos. 1781-r and 10006-r); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

d. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

G. Additional Rights to Water. As part of the water rights specifically set forth in Sections A., B., C., D., E., and F., of Article III, the Tribe has a right to water from the following sources:

1. Appurtenant Water Rights. For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. At such time that the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall become part of and not in addition to the Tribal Water Right quantified in this Compact with a May 7, 1868 priority date, provided that, the acquired water right shall retain any protections set forth in this Compact. The Tribe shall notify DNRC of any acquisition of water in the Tribe's annual report and shall identify the water right acquired, as set forth in Section E.1., of Article IV. Any water right acquired shall be added as decreed by the Montana Water Court to the list of current uses of the Tribal Water Right as provided in Section E.2., of Article IV.

2. Exempt Rights.

a. Religious or cultural uses of the Tribal Water Right by Crow Tribal members within the Reservation in de minimis amounts shall be allowed without prior review by DNRC.

b. In accordance with the terms and conditions in Section C.1., of Article IV, TWRD may authorize development of the Tribal Water Right for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations necessary to protect lives or property.

c. Uses of the Tribal Water Right provided for in Sections G.2.a. and G.2.b., of Article III, are not subject to protection of water rights Recognized Under State Law provided in Sections A.6., B.6., C.6., D.6., D.7., E.6., and F.6., of Article III, or streamflows established or modified pursuant to Section A.7., of Article III.

H. Proposed Decree. For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III is attached as Appendix 1. If there are differences between Appendix 1 and the Final Decree, the Final Decree shall control.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States.

2. Tribal Water Right: Administration.

a. Subject to the limitations imposed by this Compact and federal law, the use of the Tribal Water Right shall be administered by the Tribe through TWRD within the Reservation, in the Ceded Strip, and outside the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in F.4., of Article IV, concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which do not raise issues concerning the application of state or federal law shall be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between holders of water rights under the Tribal Water Right. TWRD shall develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current water use and diversions and new development shall be identified by location and quantity.

b. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the Effective Date of this Compact pursuant to any requirements set forth in the Constitution of the Crow Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

c. The Tribe shall not administer any water right Recognized Under State Law.

d. Administration, operation and maintenance, and delivery of the Tribal Water Right on the Crow Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws. Portions of the Project within the Bozeman Trail and Two Leggins Districts shall be administered in accordance with applicable law.

3. Water Rights Recognized Under State Law: Administration.

a. The State shall administer and enforce all water rights Recognized Under State Law to the use of surface flows, Groundwater, and storage within or outside the Reservation. The State shall have the final and exclusive jurisdiction to resolve all disputes between holders of water rights Recognized Under State Law.

b. The State shall not administer or enforce any part of the Tribal Water Right.

c. For water rights Recognized Under State Law, if any, utilizing water delivered by the Crow Irrigation Project, administration and distribution of such water shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws.

4. Distribution of Water Between the Parties. When water availability is insufficient to satisfy all water rights under the Tribal Water Right and all water rights Recognized Under State Law within the Reservation, administration and distribution shall be as follows:

a. distribution between the water administered by the Tribe and the United States for current uses of the Tribal Water Right within the Reservation developed as of the date this Compact has been ratified by the Montana

legislature and the water for water rights Recognized Under State Law within the Reservation with a priority date before this Compact has been ratified by the Montana legislature shall be on an equitable basis in proportion to the amount of water required for Tribal water use as listed pursuant to Section E.2., of Article IV, and the amount of water required for water rights Recognized Under State Law, provided that, the Parties recognize that distribution may not be on a precise proportional basis due to the need to take into account the physical constraints of water delivery. Administration and distribution by the Tribe, the United States, and the State within their proportional shares shall be pursuant to Tribal, federal, and state law respectively, and shall be coordinated as necessary. This distribution shall not modify the right of a holder of a water right Recognized Under State Law to seek enforcement of such water right against other water rights Recognized Under State Law in priority without the agreement of the water right holder.

b. future development of the Tribal Water Right after this Compact has been ratified by the Montana legislature shall be enforced as junior in priority to the water rights subject to a proportional distribution as set forth in Section A.4.a., of Article IV.

c. nothing in Section A.4.a., of Article IV shall prevent water users from agreeing to an alternative water distribution plan on the basis of individual water rights pursuant to applicable state, Tribal, or federal law.

5. Subsequent Federal or State Law. Administration under Sections A.2.d., A.3.a. and A.3.c., of Article IV shall be as set forth in this Compact except as may otherwise be determined by a court of competent jurisdiction or established by Congress.

B. Use of the Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, Tribal members, or Persons authorized by the Tribe, provided that, the Tribe may not limit or deprive Indians residing on the Reservation or in the Ceded Strip of any right, pursuant to 25 U.S.C. § 381, to a just and equal portion of the Tribal Water Right set forth in Article III.

2. Effect of Non-Use of the Tribal Water Right. State law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

C. Tribal Water Right: New Development, Change in Use, or Transfer.

1. New Development of Surface Flow, Groundwater, or Storage of the Tribal Water Right.

a. New Development of Surface Flow, Groundwater, or Storage Within the Reservation. After the Effective Date of this Compact, the Tribe may develop or authorize new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. Prerequisite Administrative Procedure within the Reservation. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation will

have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:

(1). Application for new development of a surface flow, Groundwater, or storage use within the Reservation shall be made to TWRD.

(2). TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall forward the application with its determination to DNRC.

(4). If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the DNRC, has a water right with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section

D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.

c. New Development of Surface Flow, Groundwater, or Storage for Use in Connection with Tribal Interests in the Ceded Strip. After the Effective Date of this Compact, the Tribe may develop or authorize new development, from surface flow, Groundwater, or storage, of the Tribal Water Right as set forth in Section F., of Article III and subject to the terms and conditions in Section F.1., of Article III for use in connection with Tribal Interests in the Ceded Strip; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

d. Prerequisite Administrative Procedure within the Ceded Strip. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip will have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:

(1). Application for new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip shall be made to TWRD.

(2). TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to

85-2-306, MCA, TWRD shall forward the application with its determination to DNRC.

(4). If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the department, has a water right with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or exempt rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of

Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

e. Groundwater Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following wells are exempt from the requirement of showing no Adverse Affect:

(1). Wells developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These wells may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of wells developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

f. Storage Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following storage facilities are exempt from the requirement of showing no Adverse Affect:

(1). Facilities storing the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These storage facilities may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of storage facilities developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

2. Change in Use or Transfer of the Tribal Water Right.

a. Change in Use or Transfer of the Tribal Water Right Within the Reservation. Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of a water right set forth in Article III of this Compact within the Reservation; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Right set forth in Sections C.1.a. and C.1.b., of Article IV.

b. Change in Use or Transfer of the Tribal Water Right Within the Ceded Strip. Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of the Tribal Water Right set forth in Section F.1.a., of Article III within the Ceded Strip; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used

for review of new surface flow, Groundwater, or storage development of the Tribal Water Right within the Ceded Strip set forth in Sections C.1.c. and C.1.d., of Article IV.

c. Change in Use or Transfer of the Tribal Water Right Outside the Reservation. Except as otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or authorize a Change in Use or a Transfer of the Tribal Water Right for up to 50,000 acre-feet of water as provided in Section A.1.b.(1).(a)., of Article III, for use outside the Reservation; provided that, any Transfer shall be for a term not to exceed 100 years, and may include provisions authorizing renewal for an additional term not to exceed 100 years; and provided that, no such Transfer shall be a permanent alienation of the water Transferred. Any Change in Use or Transfer of any such water right involving a point of diversion or place of use located outside the Reservation shall be considered a use outside the Reservation, except as provided in Section F., of Article III and Section C.2.b., of Article IV; and, further provided that, any use of Tribal water rights described in this Compact outside the Reservation shall not be deemed to convert such rights to rights arising under state law, and non-use of such rights outside the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.

(1). Applicable Law. No person may initiate a use, Change in Use, or Transfer of a Tribal water right set forth in this Compact outside the Reservation without first complying with applicable state law. Approval of an application for a use, Change in Use, or Transfer outside the Reservation by the State shall be conditioned on a valid Tribal authorization for such use, Change in Use, or Transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal authorization prior to initiating the use, Change in Use, or Transfer.

(2). Diversion Facilities. With respect to diversion or transportation facilities located outside the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or Persons using such water right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

D. Water Rights Recognized Under State Law: New Development, Change in Use, or Transfer.

1. Limit on New Development. DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature within the Reservation, and outside the Reservation in Bighorn River Basin and in Pryor Creek Basin, provided that, the Department may issue certificates of water right or permits for use on fee land for:

a. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

b. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

c. Temporary emergency appropriations as provided in 85-2-113(3), MCA.

2. Change in Use or Transfer of Water Rights Recognized Under State Law within the Reservation. The State may authorize a change in use or transfer of a water right Recognized Under State Law within the Reservation in accordance with state law, provided that, such change or transfer shall not Adversely Affect a use of the Tribal Water Right existing at the time of the application for change in use or transfer.

a. Prerequisite Administrative Procedure. The following procedure for determining whether a change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on an existing water right developed or authorized prior to the date of application for change of use or transfer under the Tribal Water Right shall be followed prior to seeking relief from the Compact Board:

(1). Application for a change in use or transfer of a water right Recognized Under State Law within the Reservation shall be made to DNRC.

(2). DNRC shall review the application and make a determination of whether the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right. Upon request by DNRC, TWRD shall provide information on developed and authorized Tribal Water Rights as recorded by TWRD to DNRC.

(3). If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall deny the application. If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will not have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall forward the application with its determination to TWRD.

(4). If, based upon the evidence, TWRD agrees with DNRC's determination, TWRD shall notify DNRC. If, however, based upon the evidence, TWRD cannot agree with DNRC's determination, TWRD shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any Tribal Water Right holder who, according to the records of TWRD, has a water right developed or authorized before the application date and may be affected by the proposed change in use or transfer of a water right Recognized Under State Law within the Reservation. TWRD shall notify DNRC within ninety (90) days of TWRD's determination.

(5). TWRD and DNRC should attempt to resolve any disagreement on DNRC's determination of no Adverse Affect on a cooperative basis. If TWRD or a holder of a water right developed or authorized under the Tribal Water Right disagree with the determination of no Adverse Affect, TWRD or the Tribal Water Right holder may seek relief from the Compact Board.

E. Reporting Requirements.

1. On an annual basis DNRC shall provide the Tribe and the United States with a listing of all uses of surface flow, Groundwater, or storage for which a certificate of water right or permit has been issued or a change in use or transfer

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has been approved by DNRC within the Reservation, in the Ceded Strip, and in drainages affected by this Compact.

2. Within one (1) year after this Compact has been ratified by the Montana legislature, the TWRD and the United States shall provide the DNRC with a report listing all current uses of the Tribal Water Right, including uses by Tribal members, existing as of the date this Compact has been ratified by the Montana legislature. DNRC may request additional information from TWRD or the United States to assist in reviewing the report. DNRC must approve or disapprove of the listing of all current uses of the Tribal Water Right within six (6) months after receipt of the report.

3. On an annual basis TWRD shall provide the DNRC and the United States with a listing of all new development of the Tribal Water Right described in this Compact within the Reservation, in the Ceded Strip, and outside the Reservation, and of all Changes in Use or Transfers of water rights within and outside the reservation since the last report.

4. TWRD, DNRC, and the United States may agree to modify the reporting requirements set forth in Sections D.1. and D.3., of Article IV. Such modification is pursuant to, and shall not be deemed a modification of, this Compact.

5. All reporting to the United States under this subsection shall be made to the Billings Area Office of the Bureau of Indian Affairs.

F. Enforcement: Crow-Montana Compact Board.

1. Establishment of Board. There is hereby established the Crow-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana; one member appointed by the Crow Tribal Chairman; and one member selected by the other two members. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Crow Tribal Chairman, the Director of TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second member, or within thirty (30) days after any vacancy occurs, the following procedure shall be utilized:

a. Within five (5) days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen (15) days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five (5) days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the Parties to this Compact.

4. Jurisdiction of the Board. The Crow-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between the Parties or holders of water rights developed or authorized under the Tribal Water Right and holders of water rights Recognized Under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

5. Prerequisite Administrative Procedures.

a. Any holder of a water right Recognized Under State Law concerned that a new development, Change in Use, or Transfer of the Tribal Water Right is inconsistent with the Compact shall first contact the Billings Regional Office of DNRC. If DNRC and TWRD are unable to resolve the issue in a manner acceptable to the water right holder within a reasonable time through discussion, DNRC or the water right holder may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land or to assist DNRC in obtaining reasonable access onto the land of the Tribal Water Right holder to observe the challenged new development, Change in Use, or Transfer.

b. Any Tribal Water Right holder concerned that a new development, change in use, or transfer of water by a holder of a water right Recognized Under State Law is inconsistent with the Compact shall first contact TWRD. If TWRD and DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, TWRD or the Tribal Water Right holder may seek relief through the Compact Board. DNRC agrees to assist TWRD in obtaining reasonable access onto the land of the holder of the water right Recognized Under State Law to observe the challenged development, change in use, or transfer.

c. TWRD and DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and shall not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys' fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

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7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.

b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section F.7.a., of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section F.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, may order such temporary or permanent relief as it considers just and proper.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section f.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Crow-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

A. No Effect on Other Tribal Rights or Other Federal Reserved Water Rights.

1. Except as provided in Sections A.1.b.(2). and D.7., of Article III, the relationship between the Tribal Water Right described herein and any rights to water of any other Indian Tribe or its members, or of the United States on behalf of such Tribe or its members shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes or their members outside of the Crow Reservation.

3. Nothing in this Compact is otherwise intended to affect or abrogate a right or claim of an Indian Tribe other than the Crow Tribe.

4. Except as otherwise provided herein and authorized by Congress, nothing in this Compact may be construed or interpreted in any manner to establish the

nature, extent, or manner of administration of the reserved rights to water of any other federal agency or of any other federal lands. Such reserved rights will be subject to the rule of priority in their use.

B. General Disclaimer. Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right Recognized Under State Law to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;

3. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribe;

4. To limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;

5. To authorize the taking of a water right which is vested under state or federal law;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To address or prejudge whether or how, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;

8. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

9. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;

10. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe or Tribal members, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the enjoyment of the Tribal Water Right;

11. To impair, amend, or alter rights under existing state or federal law;

12. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe or Tribal members within the Reservation or in connection with Tribal Interests in the Ceded Strip;

13. To alter or amend any provision or to adopt or preclude any interpretation of the Yellowstone River Compact, Act of October 10, 1951, ch. 629, 65 Stat. 663 (1951);

14. To alter or abridge any right reserved to the Crow Tribe of Indians under Article 4 of the May 7, 1868 Treaty of Fort Laramie; or

15. To prejudice any right that Tribal members may have to secure a portion of the Tribal Water Right from the Tribe.

C. Rights Reserved. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of United States Contingent.

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

2. The State and the Tribe recognize that this Compact has not been reviewed and approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of the United States in the negotiation of all related matters, including but not limited to, coal severance tax, Section 2 of the Crow Allotment Act (41 Stat. 751), water rights, and State and Federal contribution or cost share.

E. Expenditures of Money Contingent. The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement.

1. The State agrees to contribute the sum of $15 million, in equal annual installments for a period of no more than fifteen years beginning July 1, 1999, to a fund for the use and benefit of the Tribe.

2. Payment of the State's contributions for the benefit of the Tribe is contingent on the final approval of this Compact by the Tribe and Congress, the final inclusion of the rights set forth in the Compact in decrees by the Montana Water Court and the expiration of the time for appeal from all orders effecting such inclusion or the affirmance of the decrees or orders on appeal, the provision of releases of claims as provided in Section A.4., of Article VI, and the fulfillment of any other conditions to the effectiveness of the Compact.

3. Until all conditions for payment are fulfilled, the State and the Tribe agree that any payments due shall be paid into an interest-bearing escrow account, to be held without distribution of principal or interest until all conditions for payment to the Tribe are satisfied.

4. The Tribe agrees that the State's contribution will be dedicated to economic development and water and sewer infrastructure within the Crow Reservation. The Tribe further agrees that the State's contributions as set forth in Section A.1., of Article VI and any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and Tribe should be considered as fully satisfying any cost-share obligation on the part of the State for this Compact. The Tribe further agrees that the State's contributions and agreements herein are full and adequate consideration for the Tribe's agreements as set forth in this Compact, and that the State's contributions, together with any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and the Tribe, are full and adequate consideration for the release of all claims by the Tribe and the United States in the civil action captioned Crow Tribe of Indians v. State of Montana, Cause No. CV-78-110-BLG-JDS (D. Mont.). The Tribe further agrees that in consideration of the State's contributions and other agreements set forth in a separate coal severance tax settlement agreement, the Tribe will provide releases of all claims, including any pleadings or proposed orders

necessary to implement or otherwise give effect to the releases, in that action in a form acceptable to the Attorney General of the State.

B. Federal Legislation. The Tribe and the State agree to support federal legislation ratifying this Compact that will accomplish the following:

1. Bighorn Lake Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of storage water in Bighorn Lake, as described in Section A.1.b., of Article III and which will reallocate the water in Bighorn Lake as set forth in Section A.1.b.(1).(b).(i)., of Article III. The priority date for the allocation shall be the date of the water right held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA. This allocation shall be held in trust for the Tribe by the United States and will be part of the Tribal Water Right.

2. Right to Participate in Future Projects to Import Water. The Tribe shall have the right to initiate or participate in any project to augment the water supply in the Basins listed in Sections B., C., D. and E., of Article III, by transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe to water to a point within the Reservation designated by the Tribe.

3. Federal Court Jurisdiction. That the federal courts shall have jurisdiction to enforce the provisions of this Compact and to hear appeals from and enforce decisions of the Compact Board in accordance with Section F.7., of Article IV.

C. Federal Contributions to Settlement. Federal contributions to settlement shall be as provided by Congress.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS, EFFECTIVENESS OF COMPACT, AND WAIVER OF CLAIMS

A. Ratification and Effectiveness of Compact.

1. This Compact shall become Effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest. Upon ratification of this Compact by the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

2. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a Party to this Compact:

a. If Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the State;

b. If appropriations are not authorized by Congress within four (4) years of the date the Compact is ratified by the Tribe;

c. If the Tribe and the United States do not reach agreement on the federal contribution to settlement;

d. If appropriations are not made in the manner contemplated by the federal legislation ratifying the Compact; or

e. If the Tribe and the United States do not reach agreement on settlement of issues regarding Section 2 of the Crow Allotment Act (41 Stat.751).

3. The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Crow Tribal Council stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

4. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party to this Compact:

a. If the Tribe and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;

b. If Congress requires a state contribution to settlement that exceeds the contributions described in Section A., of Article VI;

c. If Congress resolves issues under Section 2 of the Crow Allotment Act (41 Stat. 751) in a manner Adversely Affecting water rights Recognized Under State Law;

d. If a streamflow and lake level management plan pursuant to Section A.7., of Article III is not agreed to within one (1) year after this Compact has been ratified by the Montana legislature or any extended deadline agreed to by the State, or if federal legislation is inconsistent with the streamflow and lake level management plan; or

e. If the Department of Natural Resources and Conservation does not approve the list of current uses of the Tribal Water Right pursuant to Section E.2., of Article IV.

5. The State may exercise its right to withdraw by sending to the Crow Tribal Chairman and to the Secretary of the Interior a letter delivered by certified mail from the Governor of the State of Montana stating the State's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

6. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse to support federal legislation ratifying this Compact.

7. The Parties understand and accept that federal financial contributions to the Compact may not be budgeted until October of the year following the year of enactment of the Compact.

B. Incorporation Into Decrees and Disposition of Federal Suit.

1. The Tribe, the State, and the United States agree to defend the provisions and purposes of this Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B., of Article VII.

2. Within one hundred eighty (180) days of the date this Compact is ratified by the Crow Tribal Council, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the general stream

adjudication initiated by the State of Montana, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Crow Tribe. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and the Tribe. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement of the State and the Tribe. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666, or other provision of federal law.

3. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975) (hereinafter referred to as "Low Line Canal") and such claims may only be refiled if the Tribe exercises its option to withdraw as a Party to the Compact pursuant to Section A.3., of Article VII. This Compact shall be filed as a consent decree in Low Line Canal only if, prior to the dismissal of Low Line Canal as provided in Section B., of Article VII, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Low Line Canal.

C. Settlement of Water Right Claims. The water rights and other rights confirmed to the Tribe in this Compact are in full and final satisfaction of the water right claims of the Tribe and the United States on behalf of the Tribe and its members, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe and Tribal members hereby waive, release, and relinquish any and all claims to water rights or to the use of

water within the State of Montana existing on the date this Compact is ratified by the State, the Tribe, and Congress and conditional upon a final decree, whichever date is later.

D. Binding Effect. After the Effective Date of this Compact, its terms shall be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe, Tribal members, and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe or a Tribal member, or any right arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law.

E. Waiver of Claims or Objections.

1. After the Effective Date of this Compact, the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe or a Tribal member, shall be prohibited from objecting to, or bringing a claim against, the claim or holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the assertion that such right is invalid because 85-2-301(4), MCA, is invalid as applied to such right, or that such right is inconsistent with or otherwise impairs any right reserved by the Tribe under Article 4 of the May 7, 1868 Treaty of Fort Laramie. If and to the extent necessary to effectuate the intent of this paragraph the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe shall be deemed to have waived and relinquished any claims or objections they may have against a holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the aforementioned law and Treaty.

2. Waiver of claims by the Tribe against the United States shall be as provided by Congress.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Crow Tribe, and the United States have signed this Compact on the ____ day of____, 19____.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved June 22, 1999

CHAPTER NO. 4

[SB 2]

AN ACT CLARIFYING THAT SURCHARGES FOR COURT INFORMATION TECHNOLOGY AND PROSECUTING ATTORNEY SALARIES DO NOT APPLY TO CERTAIN SPEEDING FINES AND BOND FORFEITURES; AMENDING SECTION 61-8-725, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 161-8-725, MCA, is amended to read:

"61-8-725. Penalty for violation of speed limits — no record for certain violations. (1) ~~Subject to subsection (2), a~~ *A* person violating the speed limit imposed pursuant to 61-8-303 ~~is guilty of a misdemeanor and~~ shall be fined in accordance with the following schedule:

Amount of Fine	MPH in Excess of Speed Limit
$ 20	1 - 10 (daytime)
20	1 - 10 (nighttime)
40	11 - 20
70	21 - 30
100	31+

(2) A violation of a speed limit imposed pursuant to 61-8-303 *is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and* may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

(a) 10 miles an hour during the daytime; or

(b) 5 miles an hour during the nighttime.

(3) The surcharge provided for in 3-1-317 may not be imposed for a violation of 61-8-303."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved June 22, 1999

INDEX

Index entries for the June 1999 Special Session are included in the 1999 regular session's Index to Appropriations (p. 2987) and General Index (p. 2993).

CODE SECTIONS AFFECTED

Title-Ch.-Sec.	Action	Chapter	Bill #
61-8-725	amended	Ch. 4	SB 2
85-20-901	enacted	Ch. 3	SB 1
85-20-902	enacted	Ch. 1	HB 1
85-20-903	enacted	Ch. 1	HB 1
85-20-904	enacted	Ch. 1	HB 1
85-20-905	enacted	Ch. 1	HB 1

BILL NUMBER TO CHAPTER NUMBER

Bill No.	Chapter No.
HB 1	Ch. 1
HB 2	Ch. 2
SB 1	Ch. 3
SB 2	Ch. 4

EFFECTIVE DATES

Chapter No.	Bill No.	Effective Date
Ch. 1	HB 1	06/22/1999
Ch. 2	HB 2	06/22/1999
Ch. 3	SB 1	06/22/1999
Ch. 4	SB 2	06/22/1999